12–5–02 Thursday
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CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Presidential Determination No. 03–04 of November 29, 2002

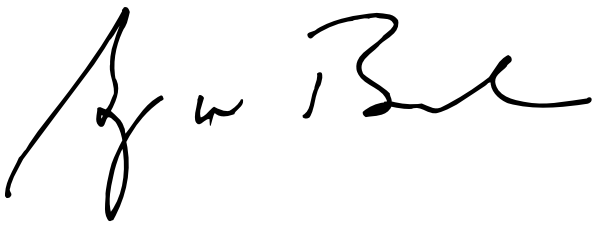
Imposition and Waiver of Sanctions Under Section 604 of the Foreign Relations Authorization Act, Fiscal Year 2003

Memorandum for the Secretary of State

Pursuant to the authority contained in section 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 (''the Act'') (Public Law 107–228), and pursuant to section 603 of that Act, regarding noncompliance by the PLO and the Palestinian Authority with certain commitments, I hereby impose the sanction set out in section 604(a)(2), ''Downgrade in Status of the PLO Office in the United States.'' This sanction is imposed for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later. You are authorized and directed to transmit to the appropriate congressional committees the initial report described in section 603 of the Act.

Furthermore, I hereby determine that it is in the national security interest of the United States to waive that sanction, pursuant to section 604 of the Act. This waiver shall be effective for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later.

You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.



The White House,
Washington, November 29, 2002.

[FR Doc. 02–30950
Filed 12–04–02; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–5]

Amendment to Class E Airspace; Fremont, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; correction; and confirmation of effective date.

SUMMARY: This document contains a correction to a direct final rule and confirms the effective date of the direct final rule which revises Class E airspace at Fremont, NE.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 30, 2002 (67 FR 37667–37669). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 3, 2002. No adverse comments were received, and thus this document confirms that this direct final rule became effective on that date.

Correction

In rule document 02–13549 beginning on page 37667 in the issue of Thursday, May 30, 2002, make the following correction:

§ 71.1 [Corrected]

On page 37669, in the first line of the first column, in § 71.1, ''lat 41° 27′ 02″N.'' should read ''lat. 41°27′01″N.''

Issued in Kansas City, MO on November 21, 2002.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 02–30849 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

New Animal Drugs; Neomycin Sulfate Soluble Powder; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Bimeda, Inc., and a change of this sponsor's address. The supplemental ANADA provides for use of neomycin sulfate soluble powder in the drinking water of growing turkeys for the control of mortality associated with *Escherichia coli* organisms susceptible to neomycin.

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Bimeda, Inc., 288 County Rd. 28, LeSueur, MN 56058–9322, filed a supplement to ANADA 200–050 that provides for use of Neomycin 325 Soluble Powder for making medicated drinking water for administration to cattle (excluding veal calves), swine, sheep, and goats for the treatment and control of colibacillosis (bacterial enteritis) caused by *E. coli* susceptible to neomycin. The supplemental ANADA provides for use of neomycin in the drinking water of growing turkeys for the control of mortality associated with *E. coli* organisms susceptible to neomycin. The supplemental application is approved as of July 10, 2002, and the regulations are amended in 21 CFR 520.1484 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, Bimeda, Inc., has informed FDA of a change of sponsor address to 291 Forest Prairie Rd., LeSueur, MN 56058. Accordingly, the agency is amending the regulations in 21 CFR 510.600 to reflect the change of sponsor address.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21

CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for ''Bimeda, Inc.'' and in the table in paragraph (c)(2) by revising the entry for ''061133'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Bimeda, Inc., 291 Forest Prairie Rd., LeSueur, MN 56058	061133
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
061133	Bimeda, Inc., 291 Forest Prairie Rd., LeSueur, MN 56058
* * * * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

4. Section 520.1484 is amended by revising paragraphs (a) and (b) to read as follows:

§ 520.1484 Neomycin sulfate soluble powder.

(a) *Specifications.* Each ounce of powder contains 20.3 grams of neomycin sulfate (equivalent to 14.2 grams of neomycin base).

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) Nos. 000069, 046573, and 051259 for use as in paragraph (d)(1) of this section.

(2) Nos. 000009 and 061133 for use as in paragraphs (d)(1) and (d)(2) of this section.

* * * * *

Dated: November 19, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–30785 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Pennfield Oil Co. which provides for the administration of an oxytetracycline injectable solution to lactating dairy cattle.

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68137, filed a supplement to approved ANADA 200–154 that provides for the use of PENNOX 200 (oxytetracycline) Injection as a treatment for various bacterial diseases in cattle and swine. The supplemental ANADA provides for the administration of this oxytetracycline injectable solution to lactating dairy cattle. The supplemental application is approved as of June 13, 2002, and the regulations are amended in 21 CFR 522.1660 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1660 [Amended]

2. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (d)(1)(iii) in the eighth sentence by removing ''053389''; and in the ninth sentence by removing ''000069 and 011722'' and by adding in its place ''000069, 011722, and 053389''.

Dated: November 8, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–30781 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Norbrook Laboratories, Ltd. The ANADA provides for the administration

of an oxytetracycline injectable solution to cattle and swine for the treatment of various bacterial diseases.

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland, filed original ANADA 200–306 that provides for the use of Oxytetracycline Injection (200 milligrams per milliliter (mg/mL)) as a treatment for various bacterial diseases in cattle and swine. Norbrook's Oxytetracycline Injection (200 mg/mL) is approved as a generic copy of Pfizer's LIQUAMYCIN LA–200, approved under NADA 113–232. The application is approved as of June 18, 2002, and the regulations are amended in 21 CFR 522.1660 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1660 [Amended]

2. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (b) by removing ''*Sponsor*'' and by adding in its place ''*Sponsors*'', and by numerically adding ''055529''; in paragraph (d)(1)(iii) in the second and ninth sentences by numerically adding ''055529''; and in paragraph (d)(2)(iii) in the third sentence by removing ''when provided by 000010, 000069, 011722, 053389, 059130, and 061623''.

Dated: November 15, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–30782 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

New Animal Drugs; Tilmicosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, A Division of Eli Lilly & Co. The supplemental NADA provides for subcutaneous injection of tilmicosin phosphate solution for the treatment of ovine respiratory disease (ORD). FDA is also amending the regulations to add tolerances for residues of tilmicosin in sheep muscle and liver and in cattle muscle.

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7569, e-mail: ndas@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplemental application to NADA 140–929 that provides for the use of MICOTIL 300 (tilmicosin phosphate) Injection by subcutaneous injection for the treatment of ORD associated with *Mannheimia* (*Pasteurella) haemolytica*. The supplemental NADA is approved as of September 4, 2002, and the regulations are amended in 21 CFR 522.2471 and § 556.735 (21 CFR 556.735) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, § 556.735 is amended by adding a tolerance for residues of tilmicosin in sheep muscle and liver and in cattle muscle, and editorially, to reflect a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.2471 is revised to read as follows:

§ 522.2471 Tilmicosin.

(a) *Specifications.* Each milliliter of solution contains 300 milligrams (mg) tilmicosin base as tilmicosin phosphate.

(b) *Sponsor.* See No. 000986 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.735 of this chapter.

(d) *Special considerations.* (1) Not for human use. Use of this antibiotic in humans may prove fatal. Do not use in automatically powered syringes.

(2) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(e) *Conditions of use*—(1) *Cattle*—(i) *Amount.* 10 mg per kilogram (kg) body weight as a single subcutaneous injection.

(ii) *Indications for use.* For the treatment of bovine respiratory disease (BRD) associated with *Mannheimia* (*Pasteurella) haemolytica.* For the control of respiratory disease in cattle at high risk of developing BRD associated with *Mannheimia* (*P.) haemolytica.*

(iii) *Limitations.* Do not use in female dairy cattle 20 months of age or older. Use of this antibiotic in this class of cattle may cause milk residues. Do not slaughter within 28 days of last treatment.

(2) *Sheep*—(i) *Amount.* 10 mg/kg body weight as a single subcutaneous injection.

(ii) *Indications for use.* For the treatment of ovine respiratory disease (ORD) associated with *Mannheimia* (*P.) haemolytica.*

(iii) *Limitations.* Do not slaughter within 28 days of last treatment.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.735 is amended by revising paragraph (b) to read as follows:

§ 556.735 Tilmicosin.

* * * * *

(b) *Tolerances*—(1) *Cattle*—(i) *Liver (the target tissue).* The tolerance for parent tilmicosin (the marker residue) is 1.2 parts per million (ppm).

(ii) *Muscle.* The tolerance for parent tilmicosin (the marker residue) is 0.1 ppm.

(2) *Swine*—(i) *Liver (the target tissue).* The tolerance for parent tilmicosin (the marker residue) is 7.5 ppm.

(ii) *Muscle.* The tolerance for parent tilmicosin (the marker residue) is 0.1 ppm.

(3) *Sheep*—(i) *Liver (the target tissue).* The tolerance for parent tilmicosin (the marker residue) is 1.2 ppm.

(ii) *Muscle.* The tolerance for parent tilmicosin (the marker residue) is 0.1 ppm.

Dated: November 21, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–30864 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Purina Mills, Inc. The NADA provides for the use of a lasalocid Type A medicated article to make free-choice Type C medicated feed mineral blocks used for increased rate of weight gain in pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers).

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Amey L. Adams, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7560, e-mail: *aadams1@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166–6812, filed NADA 141–171 that provides for use of BOVATEC 68 (lasalocid) Type A medicated article to make Purina Sugar Mag Block 1440 BVT Medicated Mineral Block, a free-choice Type C medicated feed. The free-choice mineral block is used for increased rate of weight gain in pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers). The NADA is approved as of August 20, 2002, and the regulations are amended in § 558.311 (21 CFR 558.311) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, § 558.311 is being amended to collocate the entry for another free-choice mineral Type C medicated feed, approved under NADA 138–993, to the new entry created for NADA 141–171. This is being done to improve the readability and clarity of the regulations.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning August 20, 2002.

The agency has determined under 21 CFR 25.33(a)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.311 is amended by adding paragraph (b)(8); in paragraph (d)(7) by adding ''and (e)(1)(xviii)'' after ''(e)(1)(xii)''; by revising (e)(1)(xii); and by adding paragraph (e)(1)(xviii) to read as follows:

§ 558.311 Lasalocid.

* * * * *

(b) * * *

(8) 15 percent activity to No. 017800 for use as in paragraph (e)(1)(xviii) of this section.

* * * * *

(e) * * *

(1) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	* *	* *	*	*
(xii)	.....	Pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers): For increased rate of weight gain. Intakes of lasalocid in excess of 200 mg/head/day have not been shown to be more effective than 200 mg/head/day.	Feed continuously on a free-choice basis at a rate of not less than 60 mg or more than 300 mg of lasalocid per head per day.	046573
*	* *	* *	*	*
(xviii) 1440	.....	Pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers): For increased rate of weight gain.	Feed continuously on a free-choice basis at a rate of not less than 60 mg nor more than 200 mg of lasalocid per head per day.	021930 017800

* * * * *

Dated: November 8, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–30783 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin and Tylosin Phosphate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Animal Health. The NADA provides for use of approved, single-ingredient salinomycin and tylosin phosphate Type A medicated articles to make two-way combination Type C medicated feeds used as an aid in the prevention of coccidiosis, and for increased rate of weight gain and improved feed efficiency in broiler chickens.

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: *candres@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141–198 that provides for use of BIO–COX (30 or 60 grams per pound (g/lb) salinomycin activity) and TYLAN (10, 40, or 100 g/lb tylosin phosphate) Type A medicated articles to make two-way combination Type C medicated broiler chicken feeds. The combination Type C medicated feeds contain 40 to 60 g/ton salinomycin and 4 to 50 g/ton tylosin phosphate and are used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and for increased rate of weight gain and improved feed efficiency in broiler chickens. The NADA is approved as of September 4, 2002, and the regulations in 21 CFR 558.550 and 558.625 are being amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.550 is amended by adding paragraph (d)(1)(xxii) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(d) * * *

(1) * * *

(xxii) *Amount per ton.* Salinomycin, 40 to 60 grams; plus tylosin, 4 to 50 grams.

(A) *Indications for use.* As an aid in the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and for increased rate of weight gain and improved feed efficiency.

(B) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Not approved for use with pellet binders. May be fatal if accidentally fed to adult turkeys or horses. Salinomycin as provided by 046573; tylosin phosphate as provided by 000986 in § 510.600(c) of this chapter.

* * * * *

3. Section 558.625 is amended by adding paragraph (f)(2)(viii) to read as follows:

§ 558.625 Tylosin.

* * * * *

(f) * * *

(2) * * *

(viii) Salinomycin as in § 558.550.

Dated: November 21, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–30784 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Decoquinate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma, Inc. The supplemental NADA provides for the use of decoquinate Type A medicated articles to make Type C medicated feeds for cattle, sheep, and goats at a broader range of concentrations for the prevention of coccidiosis.

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578, e-mail: jmessenh@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed a supplement to NADA 39–417 that provides for use of DECCOX (decoquinate) Type A medicated articles to make Type C medicated feeds for cattle, sheep, and goats at a broader range of concentrations for the prevention of coccidiosis caused by various *Eimeria* species. The NADA is approved as of September 4, 2002, and the regulations are amended in 21 CFR 558.195 to reflect the approval. Section 558.195 is also revised to reflect a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.195 is revised to read as follows:

§ 558.195 Decoquinate.

(a) *Specifications.* Type A medicated article containing 6 percent decoquinate.

(b) *Approvals.* See No. 046573 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.170 of this chapter.

(d) *Special considerations.* (1) Bentonite should not be used in decoquinate feeds.

(2) Type A medicated articles may be used to manufacture dry or liquid Type B cattle (including veal calf), sheep, and goat feeds as in paragraphs (e)(2) and (e)(3) of this section.

(3) Type C cattle feeds may be manufactured from decoquinate liquid Type B feeds having a pH between 5.0 to 6.5 and containing a suspending agent to maintain a viscosity of not less than 500 centipoises.

(e) *Conditions of use.* It is used as follows:

(1)*Chickens.*

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 27.2		Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. mivati*,*E. acervulina*, *E. maxima*, and *E. brunetti*.	Do not feed to laying chickens.	046573
(ii) 27.2	Bacitracin methylene disalicylate 4 to 50	Broiler chickens: As in paragraph (e)(1)(i) of this section; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration; do not feed to laying chickens. Bacitracin methylene disalicylate as provided by No. 046573 in § 510.600(c) of this chapter.	046573
(iii) 27.2	Bacitracin zinc 10 to 50	Broiler chickens: As in paragraph (e)(1)(ii) of this section.	Feed continuously as sole ration; do not feed to laying chickens. Bacitracin zinc as provided by No. 046573 in § 510.600(c) of this chapter.	046573
(iv) 27.2	Bacitracin zinc 12 to 50 plus roxarsone 11 to 45	Broiler chickens: As in paragraph (e)(1)(ii) of this section.	Do not feed to laying chickens; withdraw 5 days before slaughter; as sole source of organic arsenic. Bacitracin zinc and roxarsone as provided by No. 046573 in § 510.600(c) of this chapter.	046573

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(v) 27.2	Bacitracin methylene disalicylate 50 and roxarsone 22.7 to 45.4	Broiler chickens: As in paragraph (e)(1)(ii) of this section; as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin; and for improved pigmentation.	Feed continuously as sole ration; do not feed to laying chickens; withdraw 5 days before slaughter. Not for use in breeder chickens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of drinking water may result in leg weakness or paralysis. Bacitracin methylene disalicylate and roxarsone as provided by No. 046573 in § 510.600(c) of this chapter.	046573
(vi) 27.2	Chlortetracycline 100 to 200	Chickens: As in paragraph (e)(1)(i) of this section; control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	Feed continuously for 7 to 14 days; do not feed to chickens producing eggs for human consumption.	046573
(vii) 27.2	Chlortetracycline 200 to 400	Chickens: As in paragraph (e)(1)(i) of this section; and for control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *Escherichia coli* susceptible to chlortetracycline.	As in paragraph (e)(1)(vi) of this section.	046573
(viii) 27.2	Lincomycin 2	Broiler chickens: As in paragraph (e)(1)(ii) of this section.	Feed as sole ration; do not feed to laying chickens; lincomycin provided by No. 000009 in § 510.600(c) of this chapter.	000009 046573
(ix) 27.2	Roxarsone 45.4	Broiler chickens: As in paragraph (e)(1)(ii) of this section; and for improving pigmentation.	Do not feed to laying chickens; withdraw 5 days before slaughter; as sole source of organic arsenic.	046573

(2) *Cattle.*

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 12.9 to 90.8		Cattle (including ruminating and nonruminating calves and veal calves): For prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*.	Feed Type C feed or milk replacer at a rate to provide 22.7 milligrams (mg) per 100 pounds (lb) of body weight (0.5 mg/kilogram (kg)) per day. Feed at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to cows producing milk for food. May be prepared from dry or liquid Type B feed containing 0.0125 to 0.5 percent decoquinate. See paragraph (d)(3) of this section.	046573
(ii) 90.9 to 535.7		Cattle (including ruminating and nonruminating calves and veal calves): As in paragraph (e)(2)(i) of this section.	Feed as a top dress at a rate to provide 22.7 mg per 100 lb of body weight (0.5 mg/kg) per day. Feed at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to cows producing milk for food. May be prepared from dry or liquid Type B feed containing 0.0125 to 0.5 percent decoquinate. See paragraph (d)(3) of this section.	046573

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(iii) 13.6	Chlortetracycline approximately 400 (varying with body weight and feed consumption to provide 10 mg/lb of body weight per day)	Calves, beef and nonlactating dairy cattle: As in paragraph (e)(2)(i) of this section; for treatment of bacterial enteritis caused by *E. coli*; and for treatment of bacterial pneumonia caused by *Pasteurella multocida* organisms susceptible to chlortetracycline.	Feed Type C feed to provide 22.7 mg decoquinate and 1 gram (g) chlortetracycline per 100 lb body weight (0.5 mg/kg) per day for not more than 5 days. Type C feed may be prepared from Type B feed containing 535.8 to 5,440 g/ton decoquinate and 6,700 to 80,000 g/ton chlortetracycline. When consumed, feed 22.7 mg decoquinate per 100 lb body weight/day for a total of 28 days to prevent coccidiosis. Withdraw 24 hours prior to slaughter when manufactured from CTC (chlortetracycline) Type A medicated articles under NADA 141–147. Zero withdrawal time when manufactured from AUREOMYCIN (chlortetracycline) Type A medicated articles under NADA 141–185. Do not feed to calves to be processed for veal. Do not feed to animals producing milk for food.	046573
(iv) 13.6	Monensin 5 to 30	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(i) of this section; and for improved feed efficiency.	Feed only to cattle fed in confinement for slaughter. Feed continuously as the sole ration to provide 22.7 mg of decoquinate per 100 lb body weight per day and 50 to 360 mg of monensin per head per day. Feed at least 28 days during period of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to animals producing milk for food. Also see paragraph (d)(1) of this section and § 558.355(d)(8). Monensin as provided by No. 000986 in § 510.600(c) of this chapter.	046573
(v) 13.6	Monensin 5 to 30 plus tylosin 8 to 10	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(i) of this section; for improved feed efficiency; and for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces (Corynebacterium) pyogenes*.	Feed only to cattle fed in confinement for slaughter. Feed continuously as the sole ration to provide 22.7 mg of decoquinate per 100 lb body weight per day, 50 to 360 mg of monensin per head per day, and 60 to 90 mg of tylosin per head per day. Feed at least 28 days during period of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to animals producing milk for food. Also see paragraph (d)(1) of this section and § 558.355(d)(8). Monensin and tylosin as provided by No. 000986 in § 510.600(c) of this chapter.	046573

(3) *Minor species.*

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 12.9 to 90.8		1. Young sheep: For the prevention of coccidiosis caused by *Eimeria ovinoidalis*, *E. crandallis*, *E. parva*, and *E. bakuensis*.	Feed Type C feed or milk replacer at a rate to provide 22.7 mg per 100 lb of body weight (0.5 mg per kg) per day; feed for at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to sheep producing milk for food.	046573

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
		2. Young goats: For the prevention of coccidiosis caused by *E. christenseni* and *E. ninakohlyakimovae*.	Feed Type C feed or milk replacer at a rate to provide 22.7 mg per 100 lb of body weight (0.5 mg per kg) per day; feed for at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to goats producing milk for food.	
(ii) 90.9 to 535.7		1. Young sheep: As in item 1 of paragraph (e)(3)(i) of this section.	Feed as a top dress at a rate to provide 22.7 mg per 100 lb of body weight (0.5 mg per kg) per day; feed for at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to sheep producing milk for food.	046573
		2. Young goats: As in item 2 of paragraph (e)(3)(i) of this section.	Feed as a top dress at a rate to provide 22.7 mg per 100 lb of body weight (0.5 mg per kg) per day; feed for at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to goats producing milk for food.	

Dated: November 25, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–30863 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1611

Privacy Act Regulations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is revising its regulations, which implement the Privacy Act of 1974, to exempt two EEOC systems of records from some of the Act's requirements.

EFFECTIVE DATE: December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or Kathleen Oram, Senior Attorney, Office of Legal Counsel, (202) 663–4669 (voice) or (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION: This rule is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this rule in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362. The Commission published a notice of proposed rulemaking on July 30, 2002, proposing to amend its Privacy Act regulations. The Commission proposed to amend § 611.13 to exempt its system of records EEOC–15, Internal Harassment Inquiries, pursuant to section k(2) of the Privacy Act, from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act. In addition, the Commission proposed to add a new § 1611.14, to exempt its system of records EEOC–16, Office of Inspector General Investigative Files, pursuant to section (j)(2) from sections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) and pursuant to section (k)(2) from sections (c)(3), (d)(1), (d)(2) and (e)(1) of the Act.

Section (k) of the Privacy Act allows an agency to exempt any system of records from the above-referenced subsections of the Act if it consists of ''investigatory material compiled for law enforcement purposes.'' 5 U.S.C. 552(k)(2). Section (j) of the Privacy Act permits an agency to exempt a system of records from sections of the Act, including those noted above, if the system of records is ''maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws.'' 5 U.S.C. 552(j)(2). The files in the Internal Harassment Inquiries system of records contain information obtained by EEOC in its internal investigations of allegations of harassment filed by EEOC employees. The files in the Office of Inspector General Investigations Files system contain information obtained during investigations by the Office of Inspector General relating to programs and operations of the EEOC. It would impede the law enforcement activities of the Commission, and the Office of Inspector General to apply the disclosure and amendment provisions of the Privacy Act to the two systems of records. The regulation includes detailed reasons for the exemption of the two systems of records from the particular provisions of the Privacy Act.

We did not receive any comments on the proposed changes. This final rule, therefore, adopts the amendments proposed in the notice of proposed rulemaking without change.

Regulatory Procedures:

List of Subjects in 29 CFR Part 1611

For the Commission.

Cari M. Dominguez,

Chair.

Accordingly, chapter XIV of title 29 of the Code of Federal Regulations is amended as follows:

PART 1611—[AMENDED]

1. The authority citation for Part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a

2. Section 1611.13 is revised to read as follows:

§ 1611.13 Specific Exemptions-Charge and complaint files

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (Title VII and Americans with Disabilities Act Discrimination Case

Files), EEOC–15 (Internal Harassment Inquiries) and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act. The Commission has determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other Federal agencies in the course of harassment inquiries, and investigations of charges and complaints that violations of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans With Disabilities Act and the Rehabilitation Act have occurred. In some instances, EEOC and agencies obtain information regarding unlawful employment practices other than those complained of by the individual who is the subject of the file. It would impede the law enforcement activities of the Commission and other agencies if these provisions of the Act applied to such records.

(b) The subject individuals of the files in these systems know that the Commission or their employing agencies are maintaining a file on their charge, complaint, or inquiry, and the general nature of the information contained in it.

(c) Subject individuals of the files in EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (Title VII and Americans with Disabilities Act Discrimination Case Files, and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) have been provided a means of access to their records by the Freedom of Information Act. Subject individuals of the charge files in system EEOC–3 have also been provided a means of access to their records by section 83 of the Commission's Compliance Manual. Subject individuals of the case files in system EEOC/GOVT–1 have also been provided a means of access to their records by the Commission's Equal Employment Opportunity in the Federal Government regulation, 29 CFR 1614.108(f).

(d) Many of the records contained in system EEOC/GOVT–1 are obtained from other systems of records. If such records are incorrect, it would be more appropriate for an individual to seek to amend or correct those records in their primary filing location so that notice of the correction can be given to all recipients of that information.

(e) Subject individuals of the files in each of these systems have access to relevant information provided by the allegedly discriminating employer, accuser or harasser as part of the investigatory process and are given the opportunity to explain or contradict such information and to submit any responsive evidence of their own. To allow such individuals the additional right to amend or correct the records submitted by the allegedly discriminatory employer, accuser or harasser would undermine the investigative process and destroy the integrity of the administrative record.

(f) The Commission has determined that the exemption of these four systems of records from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act is necessary for the agency's law enforcement efforts.

3. Section 1611.14 is added to read as follows:

§ 1611.14 Exemptions—Office of Inspector General Files

(a) *General.* The system of records entitled Office of Inspector General Investigative Files consists, in part, of information compiled by the OIG for the purpose of criminal law enforcement investigations. Therefore, to the extent that information in this system falls within the scope of Exemption (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), this system of records is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(5) From subsection (e)(2), because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable from the subject thereof. It is not always feasible to rely upon the subject of an investigation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(6) From subsection (e)(3), because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, permit the subject to evade apprehension, or cause interference with undercover activities.

(b) *Specific.* The system of records entitled Office of Inspector General Investigative Files consists, in part, of investigatory material compiled by the OIG for law enforcement purposes. Therefore, to the extent that information in this system falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), this system of records is exempt from the requirements of the following subsections of the

Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG could retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

[FR Doc. 02–30525 Filed 12–4–02; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[IA–007–FOR]

Iowa Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Iowa abandoned mine land reclamation plan (Iowa plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation (DSC) proposed to assume responsibility of the abandoned mine land reclamation (AMLR) emergency program in Iowa. DSC also proposed to revise the Iowa plan to be consistent with the corresponding Federal regulations and to update other portions of its plan to reflect its current practices. In addition, we are including Iowa's proposal to revise its statute at Iowa Code (IC), Chapter 207.

EFFECTIVE DATE: December 5, 2002.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet: *jcoleman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Plan

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Iowa plan on March 28, 1983. You can find background information on the Iowa plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the March 28, 1983, **Federal Register** (48 FR 12711). You can find later actions concerning the Iowa plan and amendments to the plan at 30 CFR 915.25.

II. Submission of the Amendment

By letter dated June 14, 2002 (Administrative Record No. AML-IA–44), Iowa sent us a proposed amendment to its AMLR plan under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment at its own initiative and in response to a letter dated September 26, 1994 (Administrative Record No. AML–IA–39), that we sent to Iowa in accordance with 30 CFR 884.15(d). Iowa intended to demonstrate its capability to effectively undertake the AMLR emergency program on behalf of OSM. Iowa also intended to revise the Iowa plan to be consistent with the corresponding Federal regulations and to update other portions of its plan to reflect its current practices. In addition, we are including the revisions Iowa made to its statute at Iowa Code, Chapter 207.

We announced receipt of the proposed amendment in the August 13, 2002, **Federal Register** (67 FR 52659). 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. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on September 12, 2002. We received comments from one Federal agency and one State agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15. We are approving the amendment. Any revisions that we do not discuss below concern nonsubstantive wording changes or editorial changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. AMLR Emergency Program Demonstration

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR

program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. In a **Federal Register** notice dated September 29, 1982 (47 FR 42729), we invited states to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on our behalf and published guidelines outlining three requirements for State assumption of the AMLR emergency program. For us to grant emergency authority to the State agency, the agency must demonstrate that it has the following: (1) statutory authority to undertake emergencies, (2) technical capability to design and supervise the emergency work, and (3) administrative mechanisms to respond quickly to emergencies either directly or through contractors.

1. Statutory Authority

The DSC has had statutory authority under IC section 207.21 to administer an emergency response program since approval of the Iowa plan on March 28, 1983. In order to implement this authority, Iowa's regulations at Iowa Administrative Code (IAC) 27–50.70 and 27–50.90 provide for right of entry on any land where an emergency exists. In a letter dated November 17, 1982, the Governor of Iowa designated the Iowa Department of Soil Conservation as the State agency responsible for the AMLR Program in Iowa. The Iowa chief legal officer issued an official opinion on November 24, 1982, that the Iowa Department of Soil Conservation is authorized under State law to establish, administer, and conduct a State reclamation program in accordance with the requirements of Title IV of the Federal Surface Mining Control and Reclamation Act of 1977, the regulations promulgated thereunder, and the State Reclamation Plan. Title IV of SMCRA covers both the regular AMLR program and the emergency reclamation program. A State government reorganization in 1986 transferred the same authorities to the Division of Soil Conservation in the Iowa Department of Agriculture and Land Stewardship.

2. Technical Capability

The DSC has demonstrated through past performance that it has the technical capability to implement an AMLR emergency program. In its June 14, 2002, submission of the amendment, Iowa submitted the following statement to demonstrate the DSC's technical capability to design and supervise the emergency work.

DSC has operated a successful AML reclamation program for nearly 20 years. We have completed numerous mine shaft closure projects under that program and have been assisting OSM in its abatement of AML subsidence emergencies since 1995. We have a geotechnical engineer on staff who is familiar with emergency project design practices and we have the ability to prepare project design plans, specifications and contract documents in-house. The DSC staff can also provide in-house project inspection services since emergency projects are normally of short duration. Based on the past experience of the AML Program and the current capabilities of our staff, the Division is seeking authority to assume responsibility for the day-to-day administration of the AML emergency program in Iowa.

Iowa has conducted an AMLR program since 1983. We have found that the Iowa AMLR program is run in a cost efficient and professional manner. Iowa has conducted project design and construction work with a high degree of competence and success. Projects are thoroughly analyzed and conducted in compliance with all National Environmental Policy Act (NEPA) requirements. Construction monitoring, post-construction monitoring, and maintenance processes ensure the projects meet contract specifications, project objectives, and program goals. Over the past few years, Iowa has designed and inspected AMLR emergency projects for us. Technical capabilities used for these emergency reclamation projects are the same as those used for normal, high priority reclamation projects. As of the end of evaluation year 2001, Iowa has reclaimed 55,010 feet of dangerous highwalls, 813 acres of dangerous spoil piles and embankments, 3 dangerous impoundments, 22 hazardous water bodies, 13 vertical openings, 7 miles of sediment-clogged streams, and 610 acres of mine land contributing to flooding problems. These are the same types of abandoned mine land features that Iowa will likely encounter in the AMLR emergency program. We have found that Iowa has developed and refined the in-house investigation, design, and project administration abilities necessary to administer an AMLR program and an AMLR emergency response program.

3. Administrative Mechanisms

During a review of Iowa's revised purchasing and procurement procedures at section 884.13(d)(3), we found that the DSC has the authority to issue contracts for emergency work. For contracts not exceeding $25,000, the contracting method will either be sole-sourced or based on selective solicitation of bids depending upon the severity of the emergency and its locality. For contracts exceeding $25,000, the public notice and competitive bidding requirements of IC Chapter 73A will be followed. These contracting methods are similar to those for Federal agencies and will allow Iowa adequate flexibility to address emergency conditions. Other administrative processes required to implement the emergency program are the same as those already in place for the Iowa AMLR program.

In accordance with section 405 of SMCRA and 30 CFR 884.15, Iowa has submitted an amendment to its AMLR plan, and we have determined, pursuant to 30 CFR 884.14, the following:

1. The public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.

4. The proposed plan amendment meets all requirements of the Federal AMLR program regulations at 30 CFR Chapter VII, Subchapter R.

5. The State has an approved State Regulatory Program.

6. The amendment is in compliance with all applicable State and Federal laws and regulations.

Therefore, we find that the proposed Iowa plan amendment allowing the State to assume responsibility for an AMLR emergency response reclamation program on our behalf is in compliance with SMCRA and meets the requirements of the Federal regulations, and we are approving Iowa's assumption of the AMLR emergency program.

B. Revisions to Iowa's AMLR Plan

Iowa updated its AMLR plan to (1) ensure that it has the administrative mechanisms to quickly respond to AMLR emergencies either directly or through contractors and (2) reflect current state practices. The following table lists the sections of the AMLR plan that Iowa revised.

Plan section	Topic
I. 30 CFR 884.13(a)	A designation by the Governor of the state agency authorized to administer the state reclamation program and to receive and administer grants under 30 CFR part 886.
II. 30 CFR 884.13(b)	A legal opinion from the State Attorney General or the chief legal officer of the state agency that the designated agency has the authority under state law to conduct the program in accordance with the requirements of Title IV of the Act.
III. Policies and procedures for the state abandoned mine land reclamation program (30 CFR 884.13(c)).	A description of the policies and procedures to be followed by the designated state agency in conducting the reclamation program.
IV. Administrative and Management Structure (30 CFR 884.13(d)).	A description of the administrative and management structure to be used in conducting the reclamation program.
V. General Description of AML Reclamation (30 CFR 884.13(e)(2)–(e)(3)).	A general description, derived from available data, of the reclamation activities to be conducted under the state reclamation plan.

We find that the requirements of the revised Iowa AMLR plan meet the requirements of the Federal regulations at 30 CFR 884.13(a) through (e). Therefore we are approving them.

C. Revisions to Iowa's AMLR Statutes

Iowa proposed to amend the following sections in its statute at Iowa Code (IC), Chapter 207.

1. Iowa's statutes listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal statutes.

Topic	State statute	Federal counterpart statute
Priority order for the expenditure of moneys from the AMLR Fund on eligible lands and water.	IC 207.21 subsection 3	Section 403(a) of SMCRA.
Liens	IC 207.23	Section 408 of SMCRA.
Powers and Authority	IC 207.29	Section 413(a) of SMCRA.

Because the above State statutes contain language that is the same as or similar to the corresponding Federal statutes, we find that they are no less stringent than SMCRA. Therefore, we are approving them.

2. IC 207.21 Abandoned Mine Reclamation Program

Iowa proposed to revise IC 207.21 by adding subsections 2.a.(2) through 2.b. to read as follows:

(2) Coal lands and water damaged by coal mining processes and abandoned after August 3, 1977, if they were mined for coal or affected by coal mining processes and if either of the following occurred:

(a) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and April 10, 1981, and any moneys for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

(b) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and November 5, 1990, and the surety of the mining operator became insolvent during that period and, as of November 5, 1990, moneys immediately available from proceedings relating to the insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

b. If requested by the governor, the division may fill voids and seal tunnels, shafts, and entryways resulting from any previous noncoal mining operation and may reclaim surface impacts of any such noncoal underground or surface mines that were mined prior to August 3, 1977, and which constitute an extreme danger to the public health, safety, general welfare, or property. Sites and areas designated for remedial action pursuant to the Federal Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7901 *et seq.*, or which have been listed for remedial action pursuant to the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 7901 *et seq.*, are not eligible for expenditures under this section.

The counterpart Federal provisions are found at sections 402(g)(4)(A) through (B)(ii) and 409(a) of SMCRA, and 30 CFR 875.16. Iowa's proposed provisions have the same meaning as the counterpart Federal provisions except that at IC 207.21 subsection 2.a.(2)(a), sites must have been left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and April 10, 1981. The counterpart Federal provisions for IC 207.21 subsection 2.a.(2)(a) are found at section 402(g)(4)(B)(i) of SMCRA and provide that sites must have been left in either an unreclaimed or inadequately reclaimed condition beginning on August 4, 1977, and ending on or before the date on which the Secretary approved the State's program. Because the dates in Iowa's provision fall within the dates of the Federal provision and because the remaining proposed provisions have the same meaning as their counterpart Federal provisions, we are approving the above revisions to Iowa's program.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On June 19, 2002, under 30 CFR 884.14(a)(2) and 884.15(a), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Iowa plan (Administrative Record No. AML–IA–44.01). We received a letter dated July 22, 2002, from the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) stating that it had no concerns over Iowa's proposed amendment (Administrative Record No. AML–IA–44.02).

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

Under 30 CFR 884.14(a)(6), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 19, 2002, we requested comments on Iowa's amendment (Administrative Record No. AML–IA–44.01). The ACHP did not respond to our request. The State

Historical Society of Iowa (SHSOI) responded on July 8, 2002 (Administrative Record No. AML–IA–44.04) that the creation, amendment, and promulgation of the proposed administrative policies and procedures are not activities that would result in effects to historic properties, but that actions carried out thereunder may have the potential to cause effects. The SHSOI then stated that Part D [30 CFR 884.13(c)(3)] of Iowa's proposed AML Reclamation Plan stipulates pre-consultation and coordination with other State, Federal, and local entities, including the Iowa SHPO, that may have an interest in any proposed work and that it found this to be consistent with the procedures for consultations that are outlined in the ACHP's Protection of Historic Properties Final Rule (36 CFR Part 800). Further, the SHSOI stated that it had no objections to the amendment and no further comments. We agree that Part D [30 CFR 884.13(c)(3)] of Iowa's proposed AML Reclamation Plan regarding coordination of reclamation work is consistent with the procedures for consultations that are outlined in the ACHP's Protection of Historic Properties Final Rule (36 CFR Part 800). This final rule requires a review to determine the effect on historic properties of Federal or federally assisted undertakings such as emergency abatement projects.

V. OSM's Decision

Based on the above findings, we approve the amendment as submitted by Iowa on June 14, 2002. We approve the AMLR plan and statutes proposed by Iowa with the provision that they be fully promulgated in identical form to the plan and statutes submitted to and reviewed by us and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 915, which codify decisions concerning the Iowa program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 405(d) of SMCRA requires that the state have a program that is in compliance with the procedures, guidelines, and requirements established under the Act. Making this rule effective immediately will expedite that process.

VI. Procedural Determinations

Executive Order 12630—Takings

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

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 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 and Tribal abandoned mine land reclamation plans and plan amendments because each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

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 abandoned mine reclamation programs. 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 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because agency decisions on proposed State and Tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

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 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.*). 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. 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 corresponding 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

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. 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 did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 12, 2002.

Jeffrey D. Jarrett,

Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, 30 CFR Part 915 is amended as set forth below:

PART 915—IOWA

1. The authority citation for Part 915 continues to read as follows:

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

2. Section 915.25 is added to read as follows:

§ 915.25 Approval of Iowa abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all or portions of these amendments were published in the **Federal Register**, and the State citations or a brief description of each amendment. The amendments in this table are listed in the order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
June 14, 2002	December 5, 2002	Emergency response reclamation program; AMLR Plan sections I. through IV., V.B. and C.; Iowa Code (IC) 207.21 subsection 2.a.(2) through 2.b. and subsection 3.d.; 207.23; and 207.29.

[FR Doc. 02–30608 Filed 12–4–02; 8:45 am]
BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–127–1–7555; FRL–7416–5]

Approval and Promulgation of Implementation Plans for Texas: Transportation Control Measures Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final action, the EPA is approving a revision to the Texas State Implementation Plan (SIP) that contains the transportation control measures (TCM) rule. The requirements in the State TCM rule address the roles and responsibilities of the Metropolitan Planning Organizations (MPO), implementing transportation agencies, and provide a method for substitution of specific TCMs without a SIP revision in the nonattainment and maintenance areas. The TCM rule is intended to promote effective implementation of TCMs, provide consequences for non-implementation, establish a streamline TCM substitution process and approval, and increase interaction between the Texas Commission on Environmental Quality (TCEQ) [1] and the MPOs in the air quality transportation planning process at the local levels. The EPA is approving this SIP revision under section 110(k) and 182 of the Clean Air Act (CAA). The rationale for the final approval action and other information are provided in this document.

EFFECTIVE DATE: This final rule is effective on January 6, 2003.

ADDRESSES: Copies of the relevant material for this action are available for inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2377.

Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7186.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

Table of Contents

I. What Is the Background for This Action?

Section 182(d)(1)(A) of the CAA requires States containing ozone nonattainment areas which are classified as ''severe'' pursuant to section 181(a) of the CAA to adopt TCM and transportation control strategies to offset any growth in emissions from growth in Vehicle Miles Traveled (VMT) or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the CAA's Reasonable Further Progress (RFP) milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the General Preamble to Title I of the CAA (57 FR 13498), April 16, 1992, and in section 182(d)(1)(A).

In addition, the states may adopt TCMs as control strategies in order to meet the requirements of sections 182(b) and 182(c) of the CAA for RFP and attainment SIPs in the ozone nonattainment areas. The EPA can only accept the emission credits resulting from such TCMs if the State can provide adequate evidence that it will have authority to enforce the TCMs which are identified as a part of the control strategy in the RFP and attainment demonstration SIPs for meeting the ozone standard.[2] The State of Texas has adopted certain TCMs for meeting the RFP and attainment demonstration requirements under sections 182(b) and (c) of the CAA.

Our action today addresses the State's authority, processes, procedures, and responsibilities of each agency regarding implementation and substitution of the TCMs in any SIP in the designated nonattainment or maintenance areas.

[1] Recently, this organization changed its name from Texas Natural Resource Conservation Commission (TNRCC).

[2] See section 110(a)(2)(A) of the CAA.

II. What Did the State Submit and How Did We Evaluate It?

The Governor of Texas submitted the TCM SIP revision on May 17, 2000. The TCEQ adopted the Texas TCM rule on May 9, 2000, after appropriate public notice and hearing. The TCM rule consists of two parts. 30 Texas Administrative Code (TAC) Chapter 114 Section 114.5 includes ''Transportation Planning Definitions.'' 30 TAC Chapter 114 Section 114.270 contains ''Transportation Control Measures,'' which addresses the roles and responsibilities of the MPOs and implementing transportation agencies in nonattainment and maintenance areas and provides a method for the substitution of TCMs. The TCEQ developed the TCM rule in cooperation with the MPOs, the Texas Department of Transportation, and in consultation with the Federal Highway Administration, Federal Transit Administration, and the EPA. The State TCM rule identifies the responsibility of each agency and sets forth the procedures and processes for selection of the TCMs, inclusion in the SIP, periodic reporting and record-keeping, corrective measures, emissions reductions and TCM effectiveness, and consequences of non-implementation. In addition, the rule specifically establishes processes and procedures for substitution of any TCM in the SIP that cannot be implemented for any reason by the implementation date in the SIP. The TCM rule guarantees that substituted TCMs will be both equivalent [3] in terms of emissions, and enforceable.[4] The procedures for substitution of the TCMs require public notice and comment period and consultation, but do not require a formal SIP revision and approval by the EPA.

We have reviewed the State TCM processes and procedures, and we have evaluated the provisions of the rule based on the criteria provided in the CAA for development of SIPs in the nonattainment and maintenance areas. We note that neither the CAA nor the EPA rules require the State to develop, and submit as a SIP revision, a TCM rule. Our evaluation is specifically based on sections 110, 176, 182, and consistency of this rule with the CAA. Based on this review, we have determined that the TCEQ's TCM rule provides adequate authority and procedures for implementation and substitution of TCMs in the designated nonattainment and maintenance areas including how equivalency is determined, public participation and EPA concurrence. Therefore, we are approving this SIP revision.

III. Responses to Comments on the Direct Final Action

On July 16, 2001, the EPA published a direct final rule approving this revision to the Texas SIP containing the TCM rule. This rule contained the condition that if any adverse comments were received by the end of the public comment period on August 15, 2001, the direct final rule would be withdrawn, and we would respond to the comments in a subsequent final action. One set of comments was received from the Committees for Land, Air, Water, and Species (CLAWS). The following summarizes the comments and EPA's response to these comments:

Comment 1: This comment states that the criteria for when a TCM substitution is appropriate must be specified. Substitution ''for any reason'' is not appropriate. MPOs can simply evade non-implementation issues through abuse of the substitution process.

Response: 30 TAC section 114.270(f)(1)(A) requires that a substitute TCM provide for equivalent or greater emissions reductions than the TCM to be replaced. EPA feels that this prevents MPOs from either substituting a TCM with one that does not provide an equivalent level of emissions reductions, or simply withdrawing or failing to implement a TCM.

Furthermore, 30 TAC section 114.270(c) requires that all TCMs be developed, coordinated, funded, approved, implemented, tracked, evaluated, and monitored in accordance with 30 TAC section 114.260 (relating to Transportation Conformity); Title 40 Code of Federal Regulations, part 93 (Conformity to State or Federal Implementation Plans of Transportation Plans); the Federal Clean Air Act; and the EPA TCM SIP approval criteria listed in the EPA guidance document ''Transportation Control Measures: State Implementation Plan Guidance, EPA 450/2–89–020, September 1990.'' EPA believes that this ensures that the TCM substitution process will be adequately monitored, tracked, and if necessary properly enforced.

Comment 2: This comment states that the public should have a representative in the working group that evaluates alternative TCMs.

Response: A public hearing is required by 30 TAC section 114.270(f)(5) prior to a substitution being made. The public will have a minimum of 30 days prior to the hearing to submit comments. Comments can also be submitted during the public hearing itself. EPA believes that this affords the public ample opportunity to be engaged in the TCM substitution process.

Comment 3: This comment states that EPA's concurrence period of 14 days is too short and unreasonable. The period should be at least 60 days. EPA must make an independent finding of TCM equivalency and publish it in the **Federal Register**.

Response: As required by 30 TAC sections 114.270(f)(3), and 114.270(f)(4), in order to identify and evaluate possible substitute TCMs, the MPO must form a committee or working group which will consult with EPA Region 6. The MPO, the TCEQ, and the EPA Region 6 must concur with the appropriateness and equivalency of the substitute TCM. Consequently, EPA will be fully engaged in the TCM substitution process prior to the final 14 day concurrence period cited in the comment, and will have ample opportunity to conduct its analysis.

Regarding the second part of the question, EPA does not agree that it must conduct future rulemaking on TCM substitution. In approving the rule today as part of the Texas SIP, EPA finds that under the rule, all TCM substitutions will produce equivalent emission reductions and meet all TCM approval requirements or will be in violation of the approved SIP. The principal reasons for the TCM substitution process are to (1) allow MPOs flexibility in meeting emissions requirements, and (2) to encourage the inclusion of TCMs in the SIP. EPA will be engaged in this process to ensure TCM equivalency of any substitution. If EPA were to publish each TCM finding in the **Federal Register**, along with the presumed public comment period typical of such announcements, much of the intended benefits of a streamlined TCM substitution process would be lost. EPA believes that the State's requirements for a 30-day comment period and public hearing already provide ample opportunity for public involvement in the substitution process.

Comment 4: This comment states substitute TCM equivalency must be evaluated in units of emissions reductions, VMT reductions, and trip start reductions.

Response: As stated in the response to Comment 1, 30 TAC section 114.270(f)(1) (A) requires that a substitute TCM must provide for equivalent or greater emissions reductions than the TCM to be replaced. In addition 30 TAC section 114.270(f)(2) requires that the analysis of substitute TCMs must be consistent with the methodology used for evaluating TCMs

[3] 30 TAC section 114.270(f)(1)(A).

[4] 30 TAC section 114.270(f)(1)(D).

in the SIP, including the use of the latest emissions modeling techniques. EPA believes that these requirements will ensure that TCM equivalency will be adequately evaluated.

Comment 5: This comment states that any TCM substitution analysis and evaluation must include a comparative environmental and social justice impact process. An environmental justice representative should be a member of the working group.

Response: EPA fully supports Executive Order 12898, concerning environmental justice. In addition, the Federal Transit Administration and the Federal Highway Administration each have environmental justice policies, to which State Departments of Transportation that receive federal funds must adhere.

The Agency defines environmental justice to mean the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws and policies, and their meaningful involvement in the decision making processes of the government.

EPA encourages the MPO, in the formation of the committee or working group that will evaluate possible substitute TCMs, (as required by 30 TAC sections 114.270(f)(3)) to include representatives from the portions of the community or communities affected by the TCM substitution and those concerned about environmental justice issues. EPA believes that since the public will have, as provided for by 30 TAC section 114.270(f)(5), a minimum of 30 days prior to the hearing to submit comments, and an opportunity to submit comments during the public hearing itself, ample opportunity for meaningful public involvement in the TCM substitution process will be provided.

Comment 6: This comment states the language concerning ''implementation date'' must be clarified. The initiation and full implementation of substitute TCMs should be undertaken in the same time frame as the original TCM. If this is not possible, the completion of the substitute TCM's full implementation should occur at the same time as the original TCM. If this is not possible, full implementation should occur as expeditiously as practicable. Any temporal loss of emissions reductions must be backfilled through ERC bank purchases or other offsetting emissions reductions to meet SIP timetables for emissions reductions.

Response: As required by 30 TAC sections 114.270(f)(1)(B) and 114.270(f)(1)(C), a substitute TCM must provide for implementation in the time frame established for the TCM in the SIP. If the implementation date has already passed, measures that require funding must be included in the first year of the next transportation improvement program and metropolitan transportation plan adopted by the MPO. Full implementation must occur not later than two years from the scheduled implementation date of the original TCM. EPA believes that these requirements will ensure that substitute TCMs are implemented as expeditiously as possible, therefore participation in an Emission Reduction Credit (ERC) bank is unnecessary.

Comment 7: This comment states that the enforceability of the substituted and substituting TCM is not evident from the rule. States cannot unilaterally amend their SIPs and rescind a TCM.

Response: Regarding the enforceability issue, 30 TAC section 114.270(f)(1)(D) requires that a substitute TCM must provide for evidence of adequate personnel, funding, and authority under state or local law to implement, monitor, and enforce the measures in order for the TCEQ to approve the substitute TCM. EPA believes that this will ensure that the substituted and substituting TCM will be adequately enforced. Additionally, both the EPA and citizens can take appropriate action for any violation of the approved SIP, which includes violations of the TCM substitution process under sections 113(a)(1), 113(a)(2), and 304 of the CAA. Regarding the second part of the comment, the purpose of the TCM substitution process is to allow substitutions, through an approval process that has been approved into the SIP, without having a separate federal SIP rulemaking. Also, the TCM substitution process is not unilateral, in that the TCEQ, EPA, the MPO, and the public are all involved, and the process has been approved into the SIP as providing for both equivalency in terms of emissions and enforceability of the substituted TCMs.

Comment 8: This comment states that EPA has not provided sufficient analysis of the legal authority to approve such a rule. The CAA requires all SIP measures to be enforceable at all times. The **Federal Register** notice lacks essential analysis of the proposed action.

A related comment states that the proposed action has national ramifications. While the benefits of flexibility in TCM implementation are significant, this must comport with the requirements of the CAA. As proposed, the rule fails to address enforceability and the issues noted above.

Response: EPA believes that a replicable procedure for enforceable TCM substitution is consistent with existing EPA SIP policy. As stated in the Direct Final Rule (66 FR 36921, July 16, 2001) neither the CAA nor the EPA rules require the State to develop, and submit as a SIP revision, a TCM rule. This evaluation is specifically based on the consistency of this rule with sections 110, 176, and 182 of the CAA. Based on this review, we have determined that the TCEQ's TCM rule provides adequate authority and procedures for implementation and substitution of TCMs in the designated nonattainment and maintenance areas including how equivalency is determined, public participation and EPA concurrence. The issue of enforceability is addressed in the response to Comment 7.

IV. What Is Our Final Action?

We are approving the Texas TCM rule which addresses the roles and responsibilities of the MPOs, implementing transportation agencies, and provides a method for substitution of the TCMs without a SIP revision in the nonattainment and maintenance areas. We have evaluated this SIP revision and have determined that the State's rules in TAC 30 Chapter 114 sections 114.5 and 114.270 provide adequate processes and procedures consistent with the CAA for implementing, tracking, and substitution of the TCMs, with equivalent control measures, which are used as a control strategy in the SIPs for attainment and maintenance of the NAAQS. The TCEQ conducted appropriate public participation during development and adoption of this rule at the local level.

V. What Administrative Requirements Apply for This Action?

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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). 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 (Pub. L. 104–4).

This rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action 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. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (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 CAA. 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 CAA. 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. 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).

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 February 3, 2003. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 21, 2002.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

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

Subpart SS—Texas

2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended:

a. Under Chapter 114, Subchapter A, by adding new section 114.5, Transportation Planning Definition, immediately following section 114.3;

b. Under Chapter 114, Subchapter G, by adding new section 114.270, Transportation Control Measures, immediately after Section 114.260.

3. The table in § 52.2270(e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding to the end of the table an entry for ''Transportation Control Measures SIP Revision.''

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal data	EPA approval date	Explanation
*	*	*	*	*
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
Subchapter A—Definitions				
Section 114.5	Transportation Planning Definition	05/03/2000	12/5/02 and FR page cite.	
*	*	*	*	*
Subchapter G—Transportation Planning				

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal data	EPA approval date	Explanation
* * * * * * *				
Section 114.270	Transportation Control Measures	05/03/2000	12/5/02 and FR page cite.	
* * * * * * *				

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* * * * * * *				
Transportation Control Measures SIP Revision.	All Nonattainment and Maintenance Areas.	05/09/2000	12/5/02 and FR page cite.	Chapter 1. Introduction, Chapter 2. General, and Chapter 3. Criteria and Procedures.

[FR Doc. 02–30764 Filed 12–4–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–1999–6189]

RIN 9991–AA31

Organization and Delegation of Powers and Duties; Delegations to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) is delegating to the Administrator of the Maritime Administration his authority to enforce the prohibition of shipment of Government-impelled cargoes on vessels if: (1) The vessel has been detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party; or (2) the operator of the vessel has on more than one occasion had a violation of an international safety convention to which the United States is a party. The authorities relating to this matter are vested in the Secretary of Transportation by 46 U.S.C. 2302(e)(2001), added by section 408(a) of Public Law 105–383, approved November 13, 1998 (112 Stat. 3411, 3430).

EFFECTIVE DATE: December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Director, Office of Management and Information Services, Maritime Administration, MAR–310, Room 7301, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–2811.

SUPPLEMENTARY INFORMATION: The Secretary is delegating to the Maritime Administrator his authority to enforce the prohibition of shipment of Government-impelled cargoes on a vessel if: (1) The vessel has been detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel; or (2) the operator of the vessel has on more than one occasion had a violation of an international safety convention to which the United States is a party, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel. The prohibition expires for a vessel on the earlier of (1) one year after the date of the publication in electronic form on which the prohibition is based; or (2) any date on which the owner or operator of the vessel prevails in an appeal of the violation of the relevant international convention on which the determination is based. The term ''Government-impelled cargo'' means cargo for which a Federal agency contracts directly for shipping by water or for which (or the freight of which) a Federal agency provides financing, including financing by grant, loan, or loan guarantee, resulting in shipment of the cargo by water. The authorities relating to this matter are vested in the Secretary of Transportation by 46 U.S.C. 2302(e)(2001), added by section 408(a) of Public Law 105–383, approved November 13, 1998 (112 Stat. 3411, 3430).

This amendment adds 49 CFR 1.66(ee) to reflect the Secretary's delegation of his authority to enforce the prohibition of shipment of Government-impelled cargoes on certain vessels to the Maritime Administrator. Since this amendment relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Maritime Administration's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

Regulatory Evaluation

Regulatory Assessment

This rulemaking is a non-significant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management

and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Collection of Information

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

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the States nor preempt any State law or regulation.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended, effective upon publication, to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Public Law 101–552, 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2).

2. In section 1.66, add new paragraph (ee) to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(ee) Exercise the authority vested in the Secretary of Transportation by section 408(a) of Public Law 105–383 approved November 13, 1998, (112 Stat. 3411 and 3430), 46 U.S.C. 2302(e), relating to the enforcement of the prohibition of shipment of Government-impelled cargoes on vessels if (1) the vessel has been detained and determined to be substandard by the Secretary of Transportation for violation of an international safety convention to which the United States is a party; or (2) the operator of the vessel has on more than one occasion had a violation of an international safety convention to which the United States is a party. The term ''Government-impelled cargo'' means cargo for which a Federal agency contracts directly for shipping by water or for which (or the freight of which) a Federal agency provides financing, including financing by grant, loan, or loan guarantee, resulting in shipment of the cargo by water.

* * * * *

Issued on November 26, 2002.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 02–30852 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573 and 577

[Docket No. NHTSA–2001–11108, Notice 2]

RIN 2127–AI27

Motor Vehicle Safety; Acceleration of Manufacturer's Remedy Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Final rule.

SUMMARY: This document adopts a regulation implementing Section 6(a) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will be required to accelerate their programs to remedy a defect related to motor vehicle safety or a noncompliance with a Federal motor vehicle safety standard if directed to do so by NHTSA. The agency will impose this requirement if it determines that the manufacturer's remedy program is not likely to be capable of completion within a reasonable time and finds: that there is a risk of serious injury or death if the remedy program is not accelerated; and that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both.

DATES: *Effective Date:* The effective date of the final rule is January 6, 2003. Petitions for Reconsideration: Petitions for reconsideration of the final rule must be received not later than January 21, 2003.

ADDRESSES: Petitions for reconsideration of the final rule should refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact George Person, Office of Defects Investigation, NHTSA, (202) 366–5210. For legal issues, contact Coleman Sachs, Office of Chief Counsel, NHTSA, (202) 366–5238.

SUPPLEMENTARY INFORMATION:

I. Background

On November 1, 2000, the TREAD Act, Public Law 106–414, was enacted. The statute was an outgrowth, in part, of Congressional concerns over manufacturers' delays in repairing or replacing motor vehicles or motor vehicle equipment items that contain a safety-related defect or fail to comply with a Federal motor vehicle safety standard (FMVSS).

Under 49 U.S.C. 30118(b), the agency may make a final decision that a motor vehicle or item of replacement motor vehicle equipment contains a defect related to motor vehicle safety or does not comply with an applicable FMVSS. In addition, under section 30118(c), a manufacturer of a motor vehicle or replacement equipment item is required to notify the agency when it determines, or should determine, that the vehicle or equipment item contains a defect that is related to motor vehicle safety or does not comply with an applicable safety standard.

Under both circumstances, the manufacturer is required to provide notification of the defect or noncompliance to owners, purchasers, and dealers of the affected vehicle or equipment item, and remedy the defect or noncompliance without charge. Section 30119 sets forth statutory requirements for owner notification and requires the manufacturer to give such notice within a reasonable time. *See also* 49 CFR Part 577. However, if the agency makes a final decision under section 30118(b) that a motor vehicle or equipment item contains a safety-related defect or noncompliance, then it prescribes under section 30119(c)(1) the date by which the manufacturer must provide notification to the affected owners, purchasers, and dealers.

49 U.S.C. 30120 further provides that a manufacturer of a defective or noncompliant motor vehicle or replacement equipment item must repair it or replace it with an identical or reasonably equivalent vehicle or equipment item or, in the case of a

vehicle, refund the purchase price less depreciation. Under section 30120(c), if a manufacturer decides to repair a defective or noncomplying motor vehicle or replacement equipment item and the repair is not done adequately within a reasonable time, the manufacturer is required to replace the vehicle or equipment item without charge or, for a vehicle, refund the purchase price. Failure to repair within 60 days after the vehicle or equipment item is presented to a dealer in accordance with the manufacturer's notification is prima facie evidence of failure to repair within a reasonable time. The agency can extend the 60-day period if good cause for the extension is shown and the reason is published in the **Federal Register** before the period ends.

Section 30120(d) requires the manufacturer to submit its program for remedying a defect or noncompliance to the agency. Manufacturers fulfill this requirement by submitting defect and noncompliance information reports to NHTSA in accordance with procedures set forth in 49 CFR Part 573. Section 573.6(c)(8) of these regulations requires a manufacturer, as part of its report, to provide a description of the manufacturer's program for remedying the defect or noncompliance. In 1995, NHTSA amended that section (then 573.5(c)(8)) to require a manufacturer to advise NHTSA of the estimated date on which it will begin sending notifications to owners that there is a safety-related defect or noncompliance and that a remedy without charge will be available, and the estimated date on which the notification campaign will be completed. See Section 573.6(c)(8)(ii). In the preamble of the proposed rule that led to the 1995 amendment, NHTSA explained that there had been an increase in the number of recalls in which there was a significant delay in the commencement of the remedy campaign, and, in some instances, an inordinate extension in the duration of the campaign. NHTSA further explained that the amendment was necessary for the agency to assure that the timing and duration of remedy campaigns were appropriate, and to enable it to respond more completely to public questions concerning the timing of recall campaigns. 58 FR 30817, September 27, 1993.

Section 6(a) of the TREAD Act added a new paragraph (3) to 49 U.S.C. 30120(c), which provides that if the Secretary determines that a manufacturer's remedy program is not likely to be capable of completion within a reasonable time, the Secretary may require the manufacturer to accelerate the remedy program if the Secretary finds: (A) There is a risk of serious injury or death if the remedy program is not accelerated; and (B) acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both. Although section 30120(c)(3) is self-executing in the absence of implementing regulations, the statute provides that the Secretary may prescribe regulations to carry out its purposes. This authority has been delegated to NHTSA's Administrator pursuant to 49 CFR 1.50.

On December 11, 2001, we issued a notice of proposed rulemaking (NPRM) at 66 FR 64897 that would implement this provision, in which we solicited comments on how we could best approach this task. We received 11 comments in response to the NRPM. These were submitted by the Alliance of Automobile Manufacturers (Alliance), Bendix Commercial Vehicle Systems LLC (Bendix), Delphi Automotive Systems LLC (Delphi), Ford Motor Company (Ford), the Juvenile Products Manufacturers Association, Inc. (JPMA), the National Automobile Dealers Association (NADA), the Rubber Manufacturers Association (RMA), the Truck Manufacturers Association (TMA), Volkswagen of America, Inc., on its own behalf, as well as that of Volkswagen AG and Audi AG (Volkswagen), and Wenda A. Wacker, who commented both as a private citizen and as an employee of the California Department of Motor Vehicles (DMV). In addition, a comment was submitted by Attorney Lawrence Henneberger on behalf of the Motor and Equipment Manufacturers Association (MEMA) and the Original Equipment Suppliers Association (OESA). These comments have provided us with a variety of insights in developing this final rule.

II. Discussion

A. Application

In the NPRM, we proposed that the acceleration of remedy rule apply to manufacturers of motor vehicles and replacement equipment items whose products have been determined to contain a safety-related defect or a noncompliance with a FMVSS. The manufacturing entities that are subject to these requirements are listed in 49 CFR 573.3(a)–(f). We did not receive any comments on the proposed application of this rule. We are adopting this aspect of the rule as proposed.

B. Circumstances Under Which the Administrator May Require a Manufacturer To Accelerate Its Remedy Program

1. Risk of Serious Injury or Death

In the NPRM, we noted that under 49 U.S.C. 30120(c)(3), the decision to require a manufacturer to accelerate its remedy program is to be exercised at the discretion of the Administrator. We proposed that the Administrator be required to make two findings and one determination to invoke this provision. One of the proposed findings, adopted from the statute, was that there is a risk of serious injury or death if the remedy program is not accelerated. See proposed section 573.14(b)(1). We observed that for the Administrator to make this finding, there need only be a risk of serious injury or death, and not necessarily a high probability.

We received several comments with regard to this proposed finding. The Alliance, Ford, JPMA, Delphi, TMA, and NADA all took exception to the statements in the preamble that there need only be a risk of serious injury or death, and not necessarily a high probability, for a manufacturer to be required to provide an accelerated remedy, and that most safety recall campaigns address circumstances where a serious risk of injury or death can be found. The Alliance observed that under such a premise, the agency could find that virtually every recall meets the first test for requiring an accelerated remedy. Contending that Congress believed that an accelerated remedy would only be necessary in rare instances, the Alliance recommended that the text of proposed section 573.14(b)(1) be changed to require the Administrator to find, before requiring an accelerated remedy, ''that there is an imminent risk of serious injury or death if the remedy program is not accelerated.'' Ford, an Alliance member, concurred with the Alliance's comments in this regard. TMA expressed a similar opinion regarding the authorizing language in the TREAD Act.

JPMA asserted that there must be an existing risk of serious injury or death, and not a mere possibility, before the agency could require an accelerated remedy. In its view, this would have the benefit of filtering out recalls that address only minor injuries and those that address injury risks that could arise in the future, but are not present as yet. JPMA asserted that in neither of these circumstances would an accelerated remedy be warranted under the TREAD Act. Likewise, NADA proposed that an accelerated remedy be required only in recalls involving an ''unacceptable'' risk

of serious injury or death and where acceleration can be reasonably and safely achieved by expanding the sources of remedy parts, repair centers, or both.

Delphi contended that because Congress gave NHTSA discretionary authority to require an accelerated remedy, it could not have intended for these to be a definitive requirement for exercising that authority. Despite this observation, Delphi requested clarification on the level of risk that would be necessary before NHTSA would require an accelerated remedy.

The agency disagrees with many of these comments. The standard is stated in the statute and it is appropriate to graft that standard into these regulations. We reject comments that may be viewed as raising the bar with regard to when the agency may act. We may consider probabilities and consequences or, put another way, risk and harm. While we agree that accelerated remedies would not be required to address defects that present a risk only of minor injuries, we disagree with JPMA's observation that an accelerated remedy should not be required in circumstances where the risk of injury is low. Similarly, we disagree with the Alliance's proposal that we add the adjective ''imminent'' before ''risk of serious injury.'' The term ''imminent'' is not used in the statute and might be subject to varying interpretations. *See Megrig* v. *KFC Western, Inc.,* 516 U.S. 479, 486 (1996). The agency's 35 years of experience in investigating suspected safety-related defects and noncompliances, and monitoring recall campaigns, have given it sensitivity to the assessment of circumstances involving the nature, extent, and timing of risk. We intend to assess the circumstances before requiring a manufacturer to provide an accelerated remedy. As noted in the NPRM, we do not foresee a need for the agency to exercise this authority frequently.

2. Expanding Sources of Replacement Parts or Number of Repair Facilities

As proposed in the NPRM, the second finding the Administrator would need to make before requiring a manufacturer to accelerate a remedy program, also adopted from the statute, was that ''acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both.'' *See* proposed section 574.14 (b)(2). We noted that if warranted under the circumstances, we could require a manufacturer to add additional suppliers and/or production lines and/or production shifts in order to increase the number of available remedy parts. We further noted that in those cases in which the manufacturer identified supplemental repair facilities, it would have to assure that the facility had the parts and expertise needed to adequately perform the remedy.

a. Sources of Replacement Parts

With regard to expansion of the sources of replacement parts, we noted that this finding is most likely to be made when there is a substantial aftermarket supply of the parts necessary to effect the remedy, such as exists for tires, brake rotors, steering and suspension components, and ignition components. We observed, on the other hand, that it is less likely that this finding would be made where there is little or no aftermarket supply, as might be the case for air bags and anti-lock brake system (ABS) control units, since the particular specifications of the remedy part is generally unique to the particular vehicle or supplier involved. Even in the absence of an aftermarket supply, we noted that manufacturers might be able to expand the sources of replacement parts, either by contracting with additional suppliers, or by adding assembly lines or production shifts within their own plants.

Several commenters took issue with our observation that manufacturers could be required to expand the supply of replacement parts needed for a recall by adding assembly lines or production shifts within their own plants. The Alliance contended that it is nearly impossible to add assembly lines or additional work shifts to existing production at affected plants on short notice. First, the Alliance believes that such excess capacity, both in terms of machinery and labor, does not exist. Second, the Alliance observed that diverting a component production line that is dedicated to normal production requirements to the production of components needed for a recall remedy would have a ripple effect that would curtail or stop current production, perhaps even for other manufacturers if the component supplier ships to other vehicle manufacturers. Third, the Alliance stated that existing labor agreements may prohibit the hiring of extra temporary employees, or the purchasing of parts from outside sources not under contract, referred to as ''outsourcing,'' or limit the amount of overtime. Finally, the Alliance contended that there would be international legal implications to any requirement that could affect a manufacturer's production in foreign plants.

Volkswagen, which is a member of the Alliance, added that any extraterritorial directive by NHTSA might trigger a foreign country to respond by passing ''claw back'' or ''blocking'' legislation. Volkswagen described such legislation as mandating that domestic companies overseas not comply with U.S. law, and cited its view of the British Protection of Trading Interests Act of 1980. Volkswagen stated that it is possible that the foreign county could also respond by passing ''copy-cat'' legislation, which would mimic the applicable provisions of U.S. law with respect to U.S.-manufactured vehicles sold in that country. Volkswagen, which does not have production facilities in the United States, recommended that the rule be redrafted to specify that it applies only to production line or shifts located in the United States. Anticipating that NHTSA would not accept this position, Volkswagen suggested, in the alternative, that if the agency does not incorporate this limitation into the rule, that it consult with the U.S. Trade Representative and the State Department before requiring a foreign manufacturer to accelerate a remedy program so that the consequential implications and responses from the foreign government can be explored.

Volkswagen also contended that the need to increase production to assure a supply of recall remedy components could violate labor agreements in foreign countries. It stated, for example, that in Germany, some labor agreements restrict the hiring of temporary employees, preclude purchasing parts from outside sources, limit the amount of overtime, and require pre-approval of the union to add shifts or change a worker's duties. Volkswagen also cited many of the practical problems associated with adding production lines or shifts that were raised by the Alliance. Additionally, Volkswagen cited the economic consequences of shutting down a production line that is used for normal production.

JPMA expressed concern that child restraint manufacturers do not have excess tooling or trained labor that could be used to provide additional production lines or work shifts. The comment urged NHTSA to take these factors into account in recalls affecting these manufacturers.

We do not agree with the premises of many these comments. For example, there is overcapacity in many segments of the global automotive industry. Moreover, if a vehicle manufacturer has greater than expected sales and calls

upon suppliers to provide more parts than originally projected, suppliers make adjustments and increase the number of parts delivered. We wish to point out that legitimate production issues will be taken into consideration by the agency in determining, under section 573.14(b)(2), whether an acceleration of remedy program can be ''reasonably achieved'' by expanding the sources of replacement parts. If there are legal or practical limitations to a manufacturer's ability to comply with an acceleration of remedy directive, these can be identified by the manufacturer in providing the agency with information under section 573.14(c).

Turning to the international law implications of this rule that were raised by Volkswagen, NHTSA wishes to observe that if a foreign-based manufacturer produces vehicles for sale in the United States, that manufacturer is legally obligated to comply with all laws administered by NHTSA that apply to the manufacturers of vehicles sold in this county, including laws governing remedies for safety-related defects and noncompliances. There is nothing in the TREAD Act, or in any other statute administered by the agency, that would exempt foreign manufacturers from meeting these obligations. As discussed previously, NHTSA anticipates that it will only rarely have the need to require a manufacturer to accelerate a remedy program. Foreign-based manufacturers may raise particular issues regarding the expansion of the sources of replacement parts. They should be aware that our primary concern will be to have the problem corrected as quickly as possible, and that we will expect them to surmount difficulties to the fullest extent possible.

b. Number of Repair Facilities

With regard to the expansion of the number of authorized repair facilities, we noted in the NPRM that major vehicle manufacturers have large networks of dealers to perform repairs. As a consequence, we stated that we would ordinarily not expect to find a need for these major manufacturers to expand the number of authorized repair facilities. We observed that other vehicle manufacturers, such as importers of limited-production vehicles and multistage vehicle manufacturers, and most manufacturers of equipment items, do not have established networks of repair facilities. Noting that the need to travel a long distance may discourage vehicle owners from having remedy repairs performed, we stated that we could require such manufacturers to expand the number of repair facilities in order to assure that the campaign is completed in a reasonable time.

The Alliance commented on this aspect of the proposal. While not challenging the agency's assumption that its members [1] should have a sufficient dealer networks to conduct any recall, the Alliance took exception to the notion that its members might be required to provide additional facilities ''if an owner would have to travel a large distance to obtain the remedy repair directly from the manufacturer or one of its dealers.'' The Alliance contended that the TREAD Act was not intended to address the issue of convenience to a vehicle owner and asserted that owners have already factored inconvenience into their purchase decision. The Alliance further noted that if recall parts were to be provided to a repair facility unrelated to the manufacturer that is subject to the acceleration of remedy directive, no infrastructure would be in place to provide those parts and problems could occur in communicating to the unrelated facility the vehicle identification numbers (VINs) of the vehicles to be remedied, verifying the VINs as a basis for authorizing the recall repairs, or recording the recall status of the vehicles involved. The Alliance also noted that its members would not be able to prevent an unrelated facility from ''overcharging'' for the recall work or charging for additional work on the basis that it is required to remedy a defect.

The agency continues to believe that the proximity of authorized service facilities, or the lack thereof, would be an appropriate consideration in requiring an expansion in the number of repair facilities. We expect that the issue would arise less often in the case of major light vehicle manufacturers than special purpose vehicle manufacturers such as ambulance or school bus manufacturers. In any event, the agency does not believe that it is necessary to address these issues within the text of the final rule. If circumstances should dictate the use of repair facilities unrelated to the manufacturer conducting the recall, it will be up to the manufacturer to work out, by contract or otherwise, the processes necessary to supply required parts and perform required repairs, and to verify that vehicles covered by the recall receive the remedy, as well as to arrange appropriate reimbursement so that owners would not have to pay for the work performed.

3. Capability of Completion Within Reasonable Time

The NPRM also proposed that before requiring a manufacturer to accelerate its remedy program, the Administrator must also determine that the program is not likely to be capable of completion within a reasonable time. *See* proposed section 573.14(b)(3). We proposed to decide the issue of reasonableness in light of all of the circumstances, including the efforts that the manufacturer has made to complete the remedy program, as well as the safety risks associated with the defect or noncompliance.

We noted that the statute is silent with respect to when we can require a manufacturer to accelerate its program under section 6(a). We expressed the belief that in the interests of motor vehicle safety, it would be appropriate for us to impose such a requirement at any time that the statutory conditions are found to exist.

No comments were submitted regarding this issue. Section 573.14(b)(3) is therefore adopted as proposed.

4. Consultation With Manufacturer

In the NPRM, we stated that we anticipated that there would be consultation between NHTSA and the manufacturer before a manufacturer would be formally required to accelerate the remedy program, but noted that such consultation is not required by the statute. We stated our expectation that in most cases in which we believed that acceleration was appropriate, the manufacturer would take action without being directed to do so by the agency.

There were several comments regarding the issue of agency consultation with affected manufacturers. The Alliance expressed the belief that NHTSA is required under the Administrative Procedure Act to consult with the affected manufacturer before an acceleration of remedy directive is issued and to give the manufacturer an opportunity to be heard on the questions of whether there is a risk of serious injury or death if the remedy program is not accelerated and whether acceleration of the remedy program can be reasonably achieved. RMA also commented that the agency should be obliged to consult with any affected manufacturer before issuing an acceleration of remedy directive. TMA expressed concern over the adequacy of the consultation provisions in the proposed rule and the absence of a provision for the appeal of an

[1] BMW, DaimlerChrysler, Fiat, Ford, GM, Isuzu, Mazda, Mitsubishi, Nissan, Porsche, Toyota, Volkswagen, Volvo.

acceleration of remedy directive short of filing a Federal court action. In their joint comment, MEMA and OESA observed that ''if the process is to be an informed one for the agency and one of fairness to affected manufacturers while serving the public interest in avoidance of safety risk, NHTSA should closely consult with a manufacturer before proceeding with an accelerated [remedy] program.'' Those commenters stated that the need for consultation between an affected manufacturer and NHTSA should be incorporated into the regulatory text and not merely alluded to in the preamble.

The agency does not agree that a manufacturer has a statutory right to consultation. Nonetheless, we have added language to the text of section 573.14(c) to provide for consultation with the affected manufacturer before the agency requires the acceleration of a remedy program. This may enhance the agency's understanding of what is reasonably achievable. Addressing the TMA's comment, we have decided not to provide an opportunity for an administrative appeal of a directive for a manufacturer to accelerate a remedy program. On a practical level, the agency will have consulted with the affected manufacturer before requiring the manufacturer to accelerate a remedy program. Hopefully, this consultation will produce consent to implement an accelerated remedy, and minimize the conflicts that could be the subject of an administrative appeal. In addition, allowing an administrative appeal would introduce delay that would undermine the purpose of the accelerated remedy program.

C. Effect of Acceleration on the Nature and Quality of the Remedy

1. Equivalency of Replacement Parts and Repair Facilities

We stated in the NPRM that we would require manufacturers to assure that replacement parts from additional suppliers used under accelerated remedy programs are equivalent to the remedy parts supplied by the manufacturer, so that there will be no difference in the quality of the remedy received by owners. We noted, however, that in those instances where parts are purchased from manufacturers other than those who would ordinarily supply parts for the vehicle in question, it might be difficult to determine whether or not the part is equivalent. As a consequence, we proposed that the agency would, in appropriate cases, require manufacturers to provide information to owners with respect to any differences among different brands of replacement parts. We also stated that the service procedures must be ''reasonably equivalent'' to those that would have been used if the remedy program were not accelerated. See proposed Section 573.14(e).

Several comments were received concerning the need for equivalency of replacement parts and repair procedures. The Alliance complained that the proposed rule provided no clarification on who would make the determination of equivalency and the basis on which it would be made. The Alliance asked, for instance, whether the determination would be based on the engineering performance of the remedy or whether warranty and post-recall service availability would also be considered. The Alliance surmised that while aftermarket parts might be readily available for use as replacement components in a recall remedy, the matter of establishing that those parts perform in an equivalent manner to original equipment might be extremely complex and controversial. The Alliance further expressed the belief that the untested and unverified substitution of aftermarket parts may not result in equivalence, and may cause the manufacturer, dealer, and vehicle owner to bear certain additional secondary costs. The Alliance contended that this is particularly true if the aftermarket product is warranted, as these products typically are, by the product manufacturer and not the vehicle manufacturer. The Alliance conjectured that if the aftermarket product should fail, the vehicle owner would be obliged to seek remedy from the product manufacturer as opposed to the vehicle manufacturer. Because the performance of the aftermarket part would in this circumstance be unknown to the vehicle manufacturer, and because equipment manufacturers are, in most respects, not covered by NHTSA's recently issued early warning reporting (EWR) rules, the Alliance contended that any problems in the performance of aftermarket replacement parts might not be reported to the agency. As a consequence, the Alliance asserted that NHTSA must make the determination of equivalence when directing a manufacturer to obtain parts from an alternative source, and must also take responsibility for that determination and its consequences, in place of the vehicle manufacturer.

Ford stated that it concurs in the Alliance's position on the issue of equivalency. In addition, Ford stated that the proposal for the Administrator to find, before requiring a manufacturer to accelerate a remedy program, that acceleration of the program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both, ''imposes on the agency a responsibility to gather information necessary to decide whether these extraordinary remedies are appropriate.'' The comment contended, without support, that the agency is also obligated to ensure that the remedies ''do not compromise vehicle safety or interfere with the intellectual property rights of the various parties.''

In their joint comment, MEMA and OESA asked who is to make, and take responsibility for, a determination that a replacement part or service facility is ''reasonably equivalent,'' and who is to oversee the testing of alternative parts or the evaluation of additional service facilities. The comment contended that if the agency proceeds with a final rule, it ''must articulate standards or baselines'' for the term ''reasonably equivalent,'' and ''take responsibility for any such determinations made with respect both to additional sources of parts and service facilities.'' The organizations indicated concern over the involvement of additional suppliers and third party service outlets for which their members will be held accountable, particularly in the context of a safety recall campaign. The comment stated that manufacturers would be reluctant to be part of such a program because of concern over potential product liability exposure for deficiencies in the products and services of others, the negative competitive impact of having to recommend other suppliers' parts and identify them as equivalent to the manufacturer's own, and future recall responsibility if a competitor's product or third party service facility is deficient.

In its comment, Bendix contended that the proposed rule places an undue burden on the affected manufacturer to assure that replacement parts from other sources are compatible and will perform properly as a substitute for the manufacturer's own product. Bendix also asserted that a manufacturer could suffer competitive harm if it were forced to use a competitor's product to accelerate a recall, especially if it was obliged to provide consumers with specific product comparisons. Like MEMA and OESA, Bendix expressed concern over legal issues such as who would take responsibility for the equivalence of the replacement part, and who would be responsible for defective substitute components, particularly if a crash should result or an additional recall should be necessary.

Delphi also took issue with the requirement in the proposed rule for the recalling manufacturer to assure the equivalence of replacement parts. Noting that many of the parts installed on motor vehicles meet QS–9000 and/or ISO–9000 certification, the comment asserted that an alternate supplier must have its parts certified to ensure that this level of quality is maintained. Delphi expressed concern that the recalling manufacturer might have to divulge ordinarily protected intellectual property in assisting an alternate supplier in the production of remedial parts.

The agency has carefully considered each of these comments. We start from the premise that in an accelerated remedy context, a manufacturer will generally need to engage in the procurement of parts in a manner and on a schedule different from its ordinary practices. While exceptional efforts may be required, there are limits. Because the statute authorizes us to require a manufacturer to accelerate its remedy program only if such acceleration ''can reasonably be achieved,'' by definition the burden on the manufacturer will not be insurmountable. We expect to consider the types of issues raised in these comments as part of the consultative process under section 573.14(c).

Finally, the agency will not assume any legal responsibility for determining the equivalency of replacement parts or repair facilities, or for any consequences that result from the use of replacement parts or the service actions under an accelerated remedy. Nothing in the TREAD Act acceleration of remedy provision places liability on the Federal government for its actions or authorizes us to adopt any form of indemnity program.

2. Equivalency of Tires

With regard to passenger car tires, we noted that guidelines are available to assure that tires from alternative sources are at least equivalent to those being replaced. These guidelines, found in the Uniform Tire Quality Grading System (UTQGS), set forth three criteria that buyers can use to make relative comparisons among passenger car tires. *See* 49 CFR 575.104. We proposed that the manufacturer be required to provide tires of a size and type that are suitable for the owner's vehicle and of the same or better UTQGS rating in each category. Alternatively, we observed that a manufacturer could do what Bridgestone/Firestone, Inc. (Firestone) did in connection with its recall of Firestone Radial ATX and Wilderness AT tires. There, Firestone authorized owners to obtain replacement tires of their choice from any tire manufacturer, and agreed to reimburse the owner up to a specified amount per tire. We noted that for the purpose of the acceleration of remedy program, the reimbursement amount would have to be sufficient to allow for the purchase of a tire that is reasonably equivalent to the defective or noncompliant tire.

Two comments were received concerning the equivalency of remedy issue as it pertains to tires. One of these comments, from RMA, recommended that the text of proposed section 573.14(e) be changed to specify that the replacement tire have the same or higher load index and speed rating as the defective or noncompliant tire it is to replace. The second comment, from the Alliance, cited circumstances in which an alternative tire identical in size, type, and Uniform Tire Quality Grading to a tire furnished as original equipment on a vehicle may not in fact be equivalent in terms of ''tire ply, steer, noise, rolling resistance, and tire uniformity.''

We agree with the RMA suggestion and are including appropriate language in the final rule. Although we recognize the validity of the Alliance's comment, we believe that it would not be practical to specify in the rule that all replacement tires must be equivalent to the recalled tires in every possible respect. Therefore, we will not add the parameters identified by the Alliance to the text of section 573.14(e). However, an agency decision requiring acceleration may specify particular features that must be present to ensure equivalency under the circumstances of a given recall.

3. Equivalency of Child Restraint Systems

We proposed to require that all replacement child restraint systems provided under an accelerated remedy program be of the same type and the same overall quality as the recalled restraints. Examples of the ''types'' of child restraint systems for purposes of this rule are rear-facing infant seats with a base, rear-facing infant seats without a base, convertible seats (designed for use in both rear- and forward-facing modes), forward-facing only seats, high back booster seats with a five-point harness and belt positioning booster seats. These examples are described in a NHTSA brochure, DOT HS 809 230 (May 2002). These types are listed as examples; if in the future another type of seat is marketed, it can be referenced in any agency decision under this rule.

D. Obligations of a Manufacturer That Is Required To Accelerate Its Remedy Program

Under the proposal in the NPRM, a manufacturer who is required to accelerate its remedy campaign would be required to implement the accelerated remedy program as directed by the agency. We noted that the level of detail and direction provided by the agency might vary, and that it could include expanding the sources of replacement parts provided to the manufacturer's franchised dealers, expanding the number of authorized repair facilities to include facilities not owned or franchised by the manufacturer that have repair or replacement capabilities, or other provisions. We further noted that the agency might require the submission of implementation plans and schedules, and might also require the reimbursement of consumers, particularly where facilities that are not owned or franchised by the manufacturer are involved.

One comment was received regarding these implementation issues. That comment, from TMA, observed that there was nothing in the proposed rule that identified how much lead time the agency would allow a manufacturer to implement an accelerated remedy program. Rather than specifying, within the text of the rule, the amount of lead-time that a manufacturer will be allowed, the agency believes that this matter can be best addressed on a case-by-case basis, after consultation with the manufacturer. This will permit the agency to take a reasoned approach to the implementation of the accelerated remedy program, taking account of the unique circumstances that can exist within any given recall.

E. Manufacturer's Notice to Vehicle or Equipment Owners

In the NPRM, we observed that the notice that a manufacturer who is required to accelerate a remedy campaign would be required to send to owners of the vehicles or equipment items involved would vary, depending on the circumstances. We stated that if the manufacturer has not sent an initial notification to owners under 49 CFR Part 577, relevant information about alternative parts or authorized repair facilities could be included in the initial notification letter. If the manufacturer has already sent an initial notification to owners under 49 CFR Part 577, the manufacturer would in most circumstances be required to send a supplemental letter to all owners except those who have had the remedy

performed. Proposed section 577.12 included provisions regarding the scope, timing, form, and content of the notice to be sent by the manufacturer.

The Alliance submitted the only comment on the owner notification aspects of the proposed rule. The Alliance recommended that a manufacturer affected by an acceleration of remedy directive be allowed to place within the owner notification letter a statement that parts or services are being provided by suppliers or facilities other than its own, that those parts or services would not be guaranteed by the manufacturer conducting the recall, and that the owner should inquire with the part or service provider to learn whether any warranties are being provided. The agency disagrees with this suggestion, because we are concerned that this sort of language could discourage owners from having defects or noncompliances remedied with the alternate parts or at the alternate facilities, and thus would undermine the purpose of requiring acceleration. However, if a manufacturer believes that the circumstances of a particular recall warrant the inclusion of caveats in the owner notification letter, it may bring those circumstances to our attention during the consultation process.

The Alliance also commented on the specific language to be included in the owner notification letter that was set out in proposed section 577.12(c)(6). That language was intended to alert owners that if they paid for a remedy from a service facility not affiliated with the manufacturer, or for replacement parts from sources other than the manufacturer, those expenses would be eligible for reimbursement. The proposed language would further direct the owner to a website, toll-free telephone number, or mailing address where the owner could obtain information on the costs that are eligible for reimbursement and on the procedures for obtaining reimbursement. The Alliance stated that this language had the potential to confuse consumers. While acknowledging that a manufacturer should be obligated to explain the costs that will be covered, how to obtain reimbursement, and how to obtain additional information from the manufacturer, the Alliance asserted that ''NHTSA should not attempt to prescribe the exact wording of the notification, in order to permit manufacturers to conform the style and readability of the language to the rest of the notification letter.''

We recently addressed a variety of issues related to reimbursement of costs associated with remedying defects and noncompliances in a separate regulation implementing Section 6(b) of the TREAD Act, ''Reimbursement Prior to Recall.'' *See* 67 FR 64049 (October 17, 2002). In that rule, we decided not to specify exact wording for manufacturer notifications about the possible availability of reimbursement. Rather, we described what needed to be in the owner notification and stated that we would review the manufacturer's proposed language regarding reimbursement as part of our general review of owner notifications under 49 CFR 573.6(c)(10). *See* 67 FR at 64061. We will take the same approach here. To permit manufacturers reasonable flexibility in the wording of the owner notification letter, we have eliminated proposed section 577.12(c)(6).

The Alliance also recommended that proposed section 577.12(c)(2) be changed to reflect that its requirements will not apply if the manufacturer, after consultation with the agency, agrees to take steps voluntarily to accelerate the remedy, rather than pursuant to a directive. The Alliance pointed out that in this circumstance the specific requirements of section 577.12 would not be triggered, because paragraph (a) of that section explains that the notification requirements only apply when the Administrator requires acceleration.

The agency believes that the owner notification requirements in proposed section 577.12 should apply whenever a remedy program is accelerated at the suggestion of the agency, regardless of whether the affected manufacturer agrees ''voluntarily'' to take steps to accelerate the program following consultation with the agency or is directed to do so. Accordingly, it would not be appropriate to waive the notification requirements altogether for manufacturers who agree to accelerate their remedy program in advance of receiving a formal directive to do so from the agency. To reflect this, we have changed the text of section 577.12(a) to require notification, in accordance section 577.12, ''[w]hen the Administrator requires a manufacturer to accelerate its remedy program under section 573.14 of this chapter, or when a manufacturer agrees with a request from the Administrator that it accelerate its remedy program in advance of being required to do so.'' We have made a corresponding change to proposed section 577.12(c)(2) to emphasize that the statement ''that the National Highway Traffic Safety Administration has required the manufacturer to accelerate its remedy program'' need only be included in the owner notification letter when the Administrator has directed that the remedy program be accelerated.

F. Accelerated Remedy Programs Involving Reimbursement

We noted in the NPRM that in some circumstances, a remedy campaign could be accelerated without any out-of-pocket expense to the owners of the vehicles or equipment items involved, precluding the need for those owners to be reimbursed by the manufacturer. We observed that in these instances, appropriate financial arrangements could be made between the manufacturer and the dealer or repair facility. For example, when a vehicle is repaired at a dealer who is franchised or authorized by the vehicle manufacturer or when the parts in question (such as a tire) are provided by a facility owned or franchised by the manufacturer, the manufacturer would reimburse the dealer for the cost of the parts as well as the labor, and the owner would not have any out-of-pocket expense. We noted, however, that in other circumstances, the accelerated remedy program might be structured to allow an owner to obtain the remedy from independent third-party parts suppliers and/or repair facilities, pay that independent entity, and then be reimbursed by the manufacturer.

We stated that reimbursement under an accelerated remedy program would be similar in most respects to the applicable provisions of our regulation implementing section 6(b) of the TREAD Act, codified as the third and fourth sentences of 49 U.S.C. 30120(d) (''pre-notification remedy''), with two obvious differences. For one, the periods covered by the respective programs would be different. Under the pre-notification remedy program, reimbursement would be available for expenditures made by vehicle or equipment owners before they receive notification of a defect or noncompliance from the manufacturer. Under an acceleration of remedy program, reimbursement would be available for owner expenditures made after notification from the manufacturer, as provided in the program. Second, under the pre-notification remedy program, reimbursement would be available for a range of remedies addressing the underlying problem. In contrast, under an acceleration of remedy program, reimbursement may not be available at all, or when it is, may be conditioned on the use of a specific remedy. In addition, owners could be limited to obtaining the remedy at specific service facilities under an acceleration of remedy program.

We noted in the NPRM that despite these substantive differences, the general procedures for obtaining reimbursement in the two programs would be very similar. The provisions specifying the documentation a manufacturer may require a claimant to submit to obtain reimbursement would be identical in the two programs, as would the provisions relating to the amount of reimbursement and the time frame for seeking reimbursement, and the method for owners to obtain information about reimbursement availability.

Since the process governing reimbursement under the two programs would virtually be the same, we stated in the NPRM that there was no need for us to repeat those provisions or discuss them in the context of this rulemaking. Instead, we referred interested persons to our discussion of the reimbursement provisions in the preamble to the pre-notification remedy NPRM, and stated that to the extent that we modify the proposal in that NPRM following public comment, we would make corresponding changes to the applicable provisions of the accelerated remedy rule. We published a final rule on pre-notification remedies on October 17, 2002 at 67 FR 64049. In that final rule we made a number of relatively minor substantive changes to the provisions proposed in the NPRM, but these changes would not have a significant effect upon acceleration of remedy programs. As a consequence, there is no need to make corresponding revisions to section 573.14. In the preceding section of this document, we discussed changes that we have made in the text of proposed section 577.12 concerning notification to owners when reimbursement is to be provided as part of an accelerated remedy program.

G. Termination of an Accelerated Remedy Program

In the NPRM, we expressed the belief that a manufacturer should be able to terminate an accelerated remedy program when the conditions that gave rise to the need for an accelerated program no longer exist. We noted that we should not require a manufacturer to authorize the use of alternative replacement parts or to reimburse an owner who purchased such parts if the manufacturer is able to provide the recall remedy promptly. Thus, we proposed to allow a manufacturer that believes that it can meet all future demand for the remedy in a prompt manner through its own normal mechanisms (*e.g.*, its dealers) to request authorization to terminate an accelerated remedy program.

Under section 573.14(g) of the proposed rule, if NHTSA agreed with the manufacturer's request, the manufacturer could terminate the program, provided that notice is given to all owners of unremedied vehicles or equipment items at least 30 days in advance of the termination date of the accelerated remedy program. We invited comment with regard to how such notice should be given. No comments regarding this issue were submitted, and we are not addressing it within the text of this final rule.

III. Regulatory Analyses and Notices

A. Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determination whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defies as ''significant action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this final rulemaking action under E.O. 12866 and the Department of Transportation's Regulatory Policies and Procedures. This rulemaking was not reviewed under the executive order and is not considered ''significant'' under the Department of Transportation's regulatory policies and procedures. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation. We do not foresee substantially increased costs to a manufacturer because of an accelerated remedy program. First, a remedy program will already be in place at the time that a manufacturer is required by the agency to accelerate that program. The scope of the remedy program is not being expanded under this final rule. The only aspects that will be affected are the time for completion of the remedy and alternative sources of replacement parts or repair facilities needed to perform the remedy. Second, we expect this provision to be invoked infrequently, since in the large majority of cases, the manufacturer's original remedy program will fully address the defect or noncompliance in a timely fashion, or no accelerated remedy will be reasonably available.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance.

We have also considered the impacts of this final rule under the Regulatory Flexibility Act. For the reasons discussed above with regard to E.O. 12866 and the DOT Policies and Procedures, I certify that this final rule will not have significant economic impact on a substantial number of small entities. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves motor vehicle and equipment manufacturers that have submitted defect or noncompliance reports. The majority of recalls are not initiated by small entities. The primary impact of this rule will be on major motor vehicle manufacturers. Even this impact will be small because we anticipate that we will only rarely need to require a manufacturer to accelerate its remedy program.

C. National Environmental Policy Act

We have analyzed this rule under the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Paperwork Reduction Act

In the NPRM, we stated that the proposed rule would impose new collection of information burdens within the meaning of the Paperwork Reduction Act of 1995 (PRA). *See* NPRM at 66 FR 64090. At that time, we had no experience under the TREAD Act acceleration provision, did not engage in an analysis, and simply assumed that the PRA would be applicable. We have since evaluated this issue, and concluded, for a number of reasons, that the final rule will not

impose a collection of information burden that would trigger the requirements of the PRA.

First, in a recall, NHTSA may accelerate a remedy based on the statute alone, and the final rule itself provides no independent authority for the agency to require a manufacturer to undertake a collection of information. In any event, 49 CFR Part 573 already contains information collection requirements. To the extent needed, if at all, PRA authorization would be subsumed in periodic renewals of information collection authorizations with regard to Part 573.

Second, even if the final rule could be construed as imposing a collection of information requirement, that requirement would be highly discrete in the context of an individual recall action, of limited extent, and would arise so infrequently as to call the need for PRA approval into question. As indicated in the preceding discussion, the agency does not foresee the need to require manufacturers to provide accelerated remedies with any significant frequency. In fact, the acceleration provision (which, as previously indicated, is self-executing) has not been invoked in the two years since the TREAD Act was enacted.

Third, there are substantial questions as to how many manufacturers would be subject to the final rule or when they would be so subject. As such, additional information collection requirements stemming from the rule, if any, will not affect a sufficient number of manufacturers, or a sufficient share of the manufacturers within each of the industries regulated by the agency, to require the agency to obtain authorization under the PRA. *See* 5 CFR 1320.7(c) and (s).

Lastly, if there were any information collection requirements that result from the final rule, those requirements would arise in the context of agency actions to monitor manufacturers' recalls that either are influenced by agency investigations or are undertaken by a manufacturer exclusively on its own initiative. As such, these information collections appear to be exempt from the coverage of the PRA under OMB regulations at 5 CFR 1320.4(a)(2), which exempt collections of information ''during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities.''

In any event, we are providing an opportunity for comment on the above by February 3, 2003. If a commenter suggests that there are PRA information collection burdens, the commenter should provide a detailed explanation of the basis for that suggestion in the context of this rule and estimates of the burden, with adequate support.

E. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us 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.'' The E.O. defines this phrase 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.'' This rule, which is limited in its application to motor vehicle and motor vehicle equipment manufacturers, will not have 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, as specified in E.O. 13132.

F. Civil Justice Reform

This rule will not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of whether the material is organized to suit the public's needs, whether the requirements in the rule are clearly stated, whether the rule contains technical language or jargon that is not clear, and whether a different format would make the rule easier to understand. We have endeavored to meet these objectives in preparing this final rule.

List of Subjects

49 CFR Part 573

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 577

Motor vehicle safety.

In consideration of the foregoing, NHTSA is amending 49 CFR Parts 573 and 577 as set forth below.

1. The authority citation for Part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegations of authority at 49 CFR 1.50; 501.2.

2. Part 573 is amended by adding § 573.14 to read as follows:

§ 573.14 Accelerated remedy program.

(a) An accelerated remedy program is one in which the manufacturer expands the sources of replacement parts needed to remedy the defect or noncompliance, or expands the number of authorized repair facilities beyond those facilities that usually and customarily provide remedy work for the manufacturer, or both.

(b) The Administrator may require a manufacturer to accelerate its remedy program if:

(1) The Administrator finds that there is a risk of serious injury or death if the remedy program is not accelerated;

(2) The Administrator finds that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both; and

(3) The Administrator determines that the manufacturer's remedy program is not likely to be capable of completion within a reasonable time.

(c) The Administrator, in deciding whether to require the manufacturer to accelerate a remedy program and what to require the manufacturer to do, will consult with the manufacturer and may consider a wide range of information, including, but not limited to, the following: the manufacturer's initial or revised report submitted under § 573.6(c), information from the manufacturer, information from other manufacturers and suppliers, information from any source related to the availability and implementation of the remedy, and the seriousness of the risk of injury or death associated with the defect or noncompliance.

(d) As required by the Administrator, an accelerated remedy program shall include the manner of acceleration (expansion of the sources of

replacement parts, expansion of the number of authorized repair facilities, or both), may require submission of a plan, may identify the parts to be provided and/or the sources of those parts, may require the manufacturer to notify the agency and owners about any differences among different sources or brands of parts, may require the manufacturer to identify additional authorized repair facilities, and may specify additional owner notifications related to the program. The Administrator may also require the manufacturer to include a program to provide reimbursement to owners who incur costs to obtain the accelerated remedy.

(e) Under an accelerated remedy program, the remedy that is provided shall be equivalent to the remedy that would have been provided if the manufacturer's remedy program had not been accelerated. The replacement parts used to remedy the defect or noncompliance shall be reasonably equivalent to those that would have been used if the remedy program were not accelerated. The service procedures shall be reasonably equivalent. In the case of tires, all replacement tires shall be the same size and type as the defective or noncompliant tire, shall be suitable for use on the owner's vehicle, shall have the same or higher load index and speed rating, and, for passenger car tires, shall have the same or better rating in each of the three categories enumerated in the Uniform Tire Quality Grading System. *See* 49 CFR 575.104. In the case of child restraints systems, all replacements shall be of the same type (*e.g.*, rear-facing infant seats with a base, rear-facing infant seats without a base, convertible seats (designed for use in both rear- and forward-facing modes), forward-facing only seats, high back booster seats with a five-point harness, and belt positioning booster seats) and the same overall quality.

(f) In those instances where the accelerated remedy program provides that an owner may obtain the remedy from a source other than the manufacturer or its dealers or authorized facilities by paying for the remedy and/or its installation, the manufacturer shall reimburse the owner for the cost of obtaining the remedy as specified on paragraphs (f)(1) through (f)(3) of this section. Under these circumstances, the accelerated remedy program shall include, to the extent required by the Administrator:

(1) A description of the remedy and costs that are eligible for reimbursement, including identification of the equipment and/or parts and labor for which reimbursement is available;

(2) Identification, with specificity or as a class, of the alternative repair facilities at which reimbursable repairs may be performed, including an explanation of how to arrange for service at those facilities; and

(3) Other provisions assuring appropriate reimbursement that are consistent with those set forth in § 573.13, including, but not limited to, provisions regarding the procedures and needed documentation for making a claim for reimbursement, the amount of costs to be reimbursed, the office to which claims for reimbursement shall be submitted, the requirements on manufacturers for acting on claims for reimbursement, and the methods by which owners can obtain information about the program.

(g) In response to a manufacturer's request, the Administrator may authorize a manufacturer to terminate its accelerated remedy program if the Administrator concludes that the manufacturer can meet all future demands for the remedy through its own sources in a prompt manner. If required by the Administrator, the manufacturer shall provide notice of the termination of the program to all owners of unremedied vehicles and equipment at least 30 days in advance of the termination date, in a form approved by the Administrator.

(h) Each manufacturer shall implement any accelerated remedy program required by the Administrator according to the terms of that program.

3. The authority citation for 49 CFR Part 577 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

4. Part 577 is amended by adding § 577.12 to read as follows:

§ 577.12 Notification pursuant to an accelerated remedy program.

(a) When the Administrator requires a manufacturer to accelerate its remedy program under § 573.14 of this chapter, or when a manufacturer agrees with a request from the Administrator that it accelerate its remedy program in advance of being required to do so, in addition to complying with other sections of this part, the manufacturer shall provide notification in accordance with this section.

(b) Except as provided elsewhere in this section or when the Administrator determines otherwise, the notification under this section shall be sent to the same recipients as provided by § 577.7. If no notification has been provided to owners pursuant to this part, the provisions required by this section may be combined with the notification under §§ 577.5 or 577.6. A manufacturer need only provide a notification under this section to owners of vehicles or items of equipment for which the defect or noncompliance has not been remedied.

(c) The manufacturer's notification shall include the following:

(1) If there was a prior notification, a statement that identifies that notification and states that this notification supplements it;

(2) When the accelerated remedy program has been required by the Administrator, a statement that the National Highway Traffic Safety Administration has required the manufacturer to accelerate its remedy program;

(3) A statement of how the program has been accelerated (*e.g.*, by expanding the sources of replacement parts and/or expanding the number of authorized repair facilities);

(4) Where applicable, a statement that the owner may elect to obtain the recall remedy using designated service facilities other than those that are owned or franchised by the manufacturer or are the manufacturer's authorized dealers, and an explanation of how the owner may arrange for service at those other facilities;

(5) Where applicable, a statement that the owner may elect to obtain the recall remedy using specified replacement parts or equipment from sources other than the manufacturer;

(6) Where applicable, a statement indicating whether the owner will be required to pay an alternative facility and/or parts supplier, subject to reimbursement by the manufacturer; and

(7) If an owner will be required to pay an alternative facility and/or parts supplier, a statement that the owner will be eligible to have those expenditures reimbursed by the manufacturer, and a description of how a consumer may obtain information about reimbursement from the manufacturer consistent with § 577.11(b)(2), (c) and (d).

Issued on: November 26, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–30523 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 021021241-2294-02; I.D. 083002E]

RIN 0648–AP86

International Fisheries; Pacific Tuna Fisheries

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

ACTION: Final Rule; 2002 Management Measures for Yellowfin and Juvenile Bigeye Tuna

SUMMARY: NMFS issues a final rule to implement the 2002 management measures to prevent overfishing of eastern tropical Pacific(ETP) tuna stocks pursuant to recommendations by the Inter-American Tropical Tuna Commission (IATTC). These measures have been approved by the Department of State (DOS) under the terms of the Tuna Conventions Act. The purse seine fishery for tuna in the Convention Area will be closed the month of December, 2002. This action is taken to limit total fishing mortality caused by purse seine fishing in the Convention Area and thus prevent overfishing and maintain the tuna stocks at sustainable levels. In addition, the current bycatch reduction pilot program scheduled to run through 2002 is extended through 2004.

DATES: The purse seine tuna fishery closure is effective December 1, 2002, through December 31, 2002. The termination date for the bycatch reduction program is extended from January 2, 2003, to December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (IATTC) signed in 1949. The IATTC was established to provide an international arrangement to ensure effective international conservation and management of highly migratory species of fish in the Convention Area. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote sustainable fisheries. The Convention Area is defined to include waters of the eastern Pacific Ocean (EPO) bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian.

At its annual meeting June 26–28, 2002, the IATTC adopted a resolution dealing with conservation of ETP tuna stocks. The IATTC considered the use of quotas and partial fishery closures as in 1999, 2000, and 2001; however, after reviewing the administration of these quotas and partial closures and the occasions of non-compliance that resulted, the IATTC recommended that the Convention Area be closed during December 2002. This approach will provide substantial protection against overfishing in a manner that is fair and equitable and enforceable. There will be no need to investigate catch records to determine if incidental catch limits have been exceeded or to distinguish between activities inside and outside the IATTC's Commission Yellowfin Regulatory Area. The Department of State (DOS) approved this recommendation on August 7, 2002.

The closure is based on 2002 assessments of the condition of the tuna stocks in the ETP and the administrative records relating to implementation of quotas in prior years. The assessments indicate that the stocks are healthy, though there is significant uncertainty with respect to the bigeye assessment. The closure is believed to be sufficient to prevent overfishing of any tuna stock.

In addition, the IATTC recommended that the purse seine bycatch reduction and sea turtle conservation measures initially implemented in 2001 and extended through 2002 be further extended through 2004. The DOS approved this measure as well.

A proposed rule to implement these measures was published in the **Federal Register** on November 4, 2002 (67 FR 67139). The public comment period ended on November 19, 2002, and no comments were received.

This document is published under procedures in the Tuna Conventions Act of 1950, which authorizes rules to implement IATTC recommendations that have been approved by the DOS. For the reasons stated here and in accordance with the Tuna Conventions Act of 1950 and its implementing regulations, and consistent with the IATTC recommendation: (1) fishing for tuna by purse seine vessels in the ETP is prohibited from December 1, 2002, through December 31, 2002; (2) no species of tuna may be on board a purse seine vessel in the ETP from December 1, 2002, through December 31, 2002; and (3) any tuna purse seine vessel that normally fishes in the ETP must be in port for the month of December 2002, except that a vessel may transit the ETP to or from the western Pacific (i.e., west of 150 W. longitude) as long as there is an observer on board the vessel who is acting under the authority of the International Dolphin Conservation Program.

Changes from the Proposed Rule

This final rule includes several changes from the proposed rule to be more explicit and in detailed conformance with the IATTC resolution. Specifically, the requirements that prohibit ETP tuna purse seine vessels from possessing tuna and that require ETP tuna purse seine vessels to be in port for the month of December are added as in the IATTC recommendation. It had not been thought necessary to include these in the proposed rule as there was no reason to expect that these vessels would not be at port or would possess tuna in the closure period. However, these were specific provisions of the IATTC recommendation and therefore should be explicit provisions of the final rule. This should not affect the activity of U.S. tuna purse seine fishing vessels. The provision regarding vessels transiting the ETP was also added for clarity; this is an ongoing requirement, but it was specifically included in the IATTC recommendation and is therefore included in the final rule. The transit provision is beneficial for U.S. tuna purse seine fishing vessels that may want to deliver western Pacific-caught tuna to canneries in eastern Pacific nations or that wish to travel from a West Coast port to the western Pacific. These impacts are discussed in the Classification section.

Comments and Responses

No comments were received during the comment period for the proposed rule (67 FR 67139, November 4, 2002), which ended November 19, 2002.

Classification

This action is authorized by the Tuna Conventions Act, 16 U.S.C. 951–961 and 971 *et seq.*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding the economic impacts of this action. As a result, no

regulatory flexibility analysis was prepared.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Assistant Administrator for Fisheries finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the 30–day delay in the effective date of this final rule as failure to implement the closure as recommended by the IATTC could reduce the ability of the United States to promote full and complete compliance with IATTC recommendations by all parties as well as non-parties to the IATTC. This would jeopardize the continued effectiveness of the IATTC measures to conserve and manage the stocks under its purview.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: November 29, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs,National Marine Fisheries Service.

[FR Doc. 02–30789 Filed 11–29–02; 4:27 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 234
Thursday, December 5, 2002

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

Office of the Secretary

14 CFR Part 399

[Docket No. OST–96–1505]

RIN 2105–AB39

Withdrawal of Proposed Rulemaking Action; Statement of Enforcement Policy on Rebating

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws an Office of the Secretary (OST) notice of proposed rulemaking (NPRM), which has been superseded by various changes that make the proposed action no longer necessary.

FOR FURTHER INFORMATION CONTACT: Jennifer Abdul-Wali, Office of the General Counsel, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–4723; fax: (202) 366–9313; E-mail: *Jennifer.Abdul-Wali@ost.dot.gov.*

ADDRESSES: You may obtain a copy of this document from the DOT public docket through the Internet at *http://dms.dot.gov,* docket number OST–96–1505. If you do not have access to the Internet, you may obtain a copy of the notice by United States mail from the Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. You must identify docket number OST–02–13179 and request a copy of the document entitled ''Withdrawal of Proposed Rulemaking Actions.''

You may also review the public docket in person in the Docket office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office is on the plaza level of the Department of Transportation. Additionally, you can also get a copy of this document from the **Federal Register** Web site at *http://www.gpo.gov.*

SUPPLEMENTARY INFORMATION: Airlines are required by 49 U.S.C. § 41510, formerly section 403 of the Federal Aviation Act, to file tariffs with the Department that state their passenger fares, cargo rates, and associated charges in foreign air transportation. Under these requirements, it is unlawful for a carrier or ticket agent to charge a purchaser of foreign air transportation any amount other than that stated in their tariff. This prohibition also applies to cargo agents, as well as any other intermediaries providing for the carriage of passengers or cargo. The prohibition applies not only to overcharges, but also to undercharges, including what are commonly known as rebates. For example, a literal reading of the statute would prohibit a travel agent from sharing its commission on international tickets with the purchaser.

Subsequent to the enactment of Section 41510, the Airline Deregulation Act of 1978 was enacted. It resulted in direct competition among air carriers instead of governmental determination of fares and services. Following deregulation, the Department and its predecessor, the Civil Aeronautics Board, exercised prosecutorial discretion in pursuing matters relating to the rebating requirements of the Act. The Department's goals were to encourage competition and encourage low fares for consumers. As a way of reaching these goals, the Department asserted its discretion by pursuing sanctions for rebating only in instances of fraud, invidious discrimination, or conduct that would violate the antitrust laws.

On October 21, 1988, the Department issued an NPRM entitled ''Statement of Enforcement Policy on Rebating'' (OST Docket No. 45884; 53 FR 41353). The NPRM was in response to concerns raised by travel agents concerning the rebating of international airline prices. The NPRM proposed to establish an enforcement policy concerning the rebating of international airline prices.

The Department received various comments in response to the NPRM. Travel agents complained that, by obeying the law, they were losing business to competitors who ignored it. Other nations said that the Department should enforce the prohibition against rebating more rigorously.

Since publication of the NPRM, many conditions in the airline industry related to rebating have changed. The United States has increasingly negotiated with success for liberal pricing regimes in our bilateral agreements with foreign nations. As a result, in July of 1999, the Department adopted 14 CFR part 293, International Passenger Transportation, a rule that effectively exempts all United States and most foreign carriers (1) from filing any tariffs for travel to and from countries with which the United States has agreements in force that contain double-disapproval pricing rules and (2) from filing tariffs for all but normal economy fares for travel to and from countries without double-disapproval pricing regimes that in practice give carriers unfettered pricing discretion. Additionally, current practice for many air carriers is not to pay a base commission for transportation originating in the United States.

For the reasons outlined above, the Department believes that the proposed enforcement policy is no longer necessary and is withdrawing the 1988 NPRM.

Issued in Washington, DC on November 26, 2002.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 02–30851 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI45

Endangered and Threatened Wildlife and Plants; Threatened Status and Special Regulation for the Mountain Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of new information and reopening of the comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), are reopening the comment period for our proposal to list the mountain plover (*Charadrius montanus*) as a threatened species. The proposed listing action was published in the **Federal Register** on February 16, 1999 (64 FR 7587), and new information

has become available that is pertinent to the species' biology and the listing factors we are required to consider under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period to share new information we have acquired and provide the public a new opportunity to provide comments on this listing proposal.

We are also proposing a special rule under the authority of section 4(d) of the Act, containing the prohibitions necessary to provide for the conservation of the mountain plover. The prohibitions we propose do not include a prohibition against the take of mountain plover during certain routine farming practices until December 31, 2004, in Colorado, Kansas, Nebraska, Oklahoma, and Laramie and Goshen Counties, Wyoming. During this period, research will be conducted to determine the impact of farming practices on cultivated fields to mountain plover nesting success within the southern portion of the breeding range. The finalization of this rule is contingent upon a final listing of the mountain plover as threatened.

DATES: We must receive comments from all interested parties by February 3, 2003. We must receive requests for public hearings by January 21, 2003.

ADDRESSES: Send comments and materials concerning this proposal to the Western Colorado Field Supervisor, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, CO 81506–3946. You also may e-mail your comments to *al_pfister@fws.gov.* We will make comments and materials we receive available for public inspection, by appointment, during normal business hours at the above address. You also may obtain a copy of the 1999 proposed rule to list the mountain plover (64 FR 7587) from this office, or access it at our Web site at *http://www.r6.fws.gov/mtnplover/.*

FOR FURTHER INFORMATION CONTACT: Robert Leachman, at the above address, telephone 970–243–2778, facsimile 970–245–6933, or e-mail *robert_leachman@fws.gov.* A copy of this notification and other information on the mountain plover can be found on the World Wide Web at *http://www.r6.fws.gov/mtnplover/.*

SUPPLEMENTARY INFORMATION:

Background

This supplementary proposed rule abbreviates the background, life history, and listing factor discussions published in the 1999 proposed rule. Most of the information we reported in 1999 remains substantially valid. New information that represents a significant addition to the mountain plover biology, abundance, and distribution as previously reported is included in this document. We also report new information relating to threats or existing conservation actions that significantly influence evaluation of the listing factors. We have not reported all new information that only affirms previously reported findings, nor do we cite all new information that represents a continuation of ongoing research cited in the 1999 proposed rule that has not materially changed the knowledge of mountain plover biology, distribution, abundance, or conservation needs. We have revised the References Cited to include the new information we have reviewed since 1999. Our References Cited document is available on request (see **ADDRESSES**). We have retained the organization of the 1999 proposed rule in this document to make review and comparison more efficient. Briefly, we have summarized the text of some sections of the 1999 proposed rule followed by pertinent new information, or simply provided a statement for other sections that new information did not materially change findings reported in the 1999 proposed rule. In this supplemental proposed rule document, we also propose to amend the table at 50 CFR 17.11(h) to reflect the proposed special rule for mountain plover.

The mountain plover is similar in size and appearance to a killdeer (*Charadrius vociferus*), eats primarily insects, and is associated with short grass and shrub-steppe landscapes throughout its breeding and wintering range. It is commonly reported on heavily grazed sites, prairie dog colonies, and some cultivated fields. It is known to occur from Canada south across the high plains to Mexico. During the breeding season (late March through August), plovers can be found in Montana, Wyoming, and Colorado, and to a lesser extent in Utah, New Mexico, Arizona, Kansas, Nebraska, Oklahoma, and Texas. Nesting also has been reported in Canada and Mexico. During winter, plovers can be found primarily in the Central Valley and Imperial Valley of California. A few birds winter in Arizona, Texas, and Mexico.

New information now confirms a few breeding mountain plovers in Mexico (Knopf and Rupert 1999a; F. Knopf, U.S. Geological Survey-Biological Resources Division, in litt. 1999), and successful breeding on some cultivated lands in Colorado (T. McCoy, Colorado Natural Heritage Foundation, in litt. 2001). We also have new information describing the population trend of the mountain plover relative to other grassland endemics, based on new Breeding Bird Survey (BBS) data. The BBS information is provided later in this document.

Habitat Characteristics

Short vegetation, bare ground, and a flat topography are recognized as habitat-defining characteristics of the mountain plover, at both breeding and wintering locales. Suitable breeding and wintering habitat characteristics can be provided by naturally occurring physiographic features, grazing by native mammalian herbivores (*e.g.*, prairie dogs) or domestic livestock (*e.g.*, sheep), or some agricultural practices. We now report that mountain plovers also are found on white-tailed (*Cynomys leucurus*) and Gunnison's (*Cynomys gunnisoni*) prairie dog colonies (P. Deibert, Service, pers. comm. 2002; Hawks Aloft, Inc. 2001b). There also is new literature further describing a strong association of mountain plovers with prairie dogs (Dinsmore 2001, Kotliar *et al.* 1999). We also have learned that due to the absence of naturally vegetated suitable habitat, irrigated farmlands and grazed alfalfa fields have become the predominant winter habitat for mountain plovers in the Imperial Valley of California (Wunder and Knopf In draft). While in the Imperial Valley, plovers move onto fields for short periods following harvest, especially where the fields are turned over, burned, or grazed by sheep. Insect availability, furrow depth, size of dirt clods, and the vegetation of contiguous land parcels are believed to influence the suitability of individual cultivated fields (E. Marquis-Brong in litt. 1999a, F. Knopf pers. comm. 2000). Therefore, while cultivated lands are abundant throughout the Central and Imperial Valleys of California, not all of them are suitable wintering habitat.

Life History

We described the mountain plover's life history in 1999 by addressing migration periods, nesting chronology, and common habitat features. Briefly, the mountain plover arrives on its breeding grounds from late March to late April and typically lays three eggs in a shallow depression. Mountain plover nests are loosely congregated, suggesting some colonialization. Chicks begin to fledge in June, and fall migration to winter habitat is well under way in August. Important new information includes a study completed in Montana predicting that 1.9 years is the mean lifespan of a mountain plover and that the observed longevity record is 8 years (Dinsmore 2001). This research also documented that 55

percent of nests are incubated by males and 45 percent by females (Dinsmore 2001).

Breeding Distribution and Abundance

In 1999, we presented our understanding of the historic and current distribution and abundance of mountain plovers for individual States within their breeding range and for wintering habitat locations in California, Arizona, and Mexico. Briefly, most mountain plovers breed in Montana, Wyoming, and Colorado, and most mountain plovers spend about 5 months on winter habitat in California. New information now shows that the Pawnee National Grassland (Pawnee) population in northeast Colorado has significantly declined since 1991, with fewer than 100 individuals now present at this location (Knopf pers. comm. 2002). More mountain plovers than previously estimated now appear to be in South Park, Park County, Colorado (Granau and Wunder 2001). We provide the following summaries and new information for breeding and wintering locations:

Colorado: We have no better estimate of breeding mountain plover numbers in Colorado than the estimate of about 7,000 individuals provided in the 1999 proposed rule. However, we believe it is important to note some additional information regarding Weld County, Colorado, which was reported in 1999 to be a historic breeding stronghold for the mountain plover. In 1991, Knopf estimated a population of 1,280 mountain plovers on the Pawnee. As we reported in 1999, the Pawnee has experienced several exceptionally wet, cold weather events through June of each year since 1995, which has significantly changed the vegetation. These vegetation conditions continued through 1996 and 1997. The number of successfully nesting mountain plovers counted on transects monitored on the Pawnee declined from 77 in 1990 to 2 in 2001 (F. Knopf in litt. 2001). Knopf (pers. comm. 2002) currently estimates a population of less than 100 individuals on the Pawnee. Consequently, few adult birds and very little reproduction has been observed through 2002. Preliminary results on the Pawnee from 2002, a drought year, indicate success at 69 percent of 13 nests on the native prairie. Fifty nests on experimental burns were 54 percent successful (F. Knopf pers. comm. 2002).

As we reported in 1999, mountain plover research has continued in South Park, Park County, with the most current population estimate there being 1,500 to 2,000 breeding adults (Granau and Wunder 2001). In 2002, 68 nests were identified, with a nest success of 90 percent (F. Knopf pers. comm. 2002).

There also is new information about breeding mountain plovers on short grass prairie pastures and cultivated lands. Nesting habitat was modified by burning, and successful nesting by mountain plovers was documented on burned pastures on the Comanche National Grassland in Baca County in southeastern Colorado in 1999 (Svingen and Giesen 1999, K. Giesen in litt. 1999) and in South Park for several years (Granau and Wunder 2001). As we reported in 1999, mountain plovers are nesting on cultivated fields in southeast Colorado and adjacent States. To further address the implications of cultivated land to mountain plover conservation, new research was initiated in five eastern Colorado counties to better describe nest success and productivity on cultivated lands (T. McCoy in litt. 2001). In 2001, 44 nests were located on cultivated croplands in these counties, but reliable estimates of nest success, productivity, and population recruitment will require additional years of research (T. McCoy in litt. 2001).

During 2002, researchers continued to monitor the breeding activity throughout eastern Colorado. The length of the breeding season varied between 2001 and 2002, with the 2001 season ending in July and the 2002 season continuing into August. The longer 2002 season was attributable to extreme drought conditions in the eastern half of the State. Nest success did not vary substantially between cropland and rangeland in 2001 but did show slightly higher nest success on rangeland in 2002. Predation was the major cause of nest failure, except in 2001, when agricultural practices destroyed more nests on croplands. Of rangeland nests, nest success was slightly higher on grassland with prairie dog colonies than on grasslands without prairie dog colonies (F. Knopf pers. comm. 2002). The researchers suggest that the direction in 2003: (1) Focus studies more precisely on locales where plovers nest in higher densities to maximize sample sizes, (2) rigorously test the emerging pattern of comparable nest success between rangeland and croplands, and (3) test the predictions that plover densities and nest success are highest on prairie-dog towns (F. Knopf pers. comm. 2002).

There is no comprehensive science to precisely document whether the entire Colorado population is declining, stable, or increasing. Data collected from nesting sites in Colorado are not comparable to make such a cumulative State-wide trend assessment. However, credible information documents that nearly all mountain plovers have abandoned the Pawnee, a historically recognized breeding stronghold. Graul and Webster (1976) estimated that there may have been as many as 21,000 mountain plovers on the Pawnee in the early 1970s; Knopf (1991) estimated about 1,280 individuals in 1991, while presently the Pawnee population is less than 100 individuals (F. Knopf pers. comm. 2002).

Montana: Important new information is available from Montana. Mountain plovers no longer occur in Carbon, Teton, and Toole Counties (L. Hanebury pers. comm. 2002). Knowles and Knowles (1996) estimated fewer than 2,000 mountain plovers in Phillips and Blaine Counties, and fewer than 800 individuals at the other 8 occupied locations in the State. Following 6 years of research, Dinsmore (2001) estimated a population of 95 to 180 individual breeding mountain plovers in his study area in southern Phillips County, and he believes it is unlikely that there are more than 700 mountain plovers throughout all of Phillips and Blaine Counties. Dinsmore (2001) now concludes that, while the current mountain plover abundance in south Phillips County is stable, it is not known whether the number of individuals can persist in the long term, and their abundance is entirely dependent on the viability of the resident population of black-tailed prairie dogs. He also believes the estimate of 800 mountain plovers in other areas of Montana made by Knowles and Knowles (1996) is reasonable. Therefore, we believe the best information currently available indicates the total population in Montana is less than 1,500 mountain plovers (Knowles and Knowles 1996, Knowles and Knowles 1998, Dinsmore 2001, Dinsmore pers. comm. 2002). Although the Montana Department of Game, Fish, and Parks provided no data regarding mountain plover distribution and abundance in response to the 1999 proposed rule, department officials stated that, while the mountain plover population may fluctuate, it is still substantial (P. Graham, Montana Game, Fish and Parks, in litt. 1999).

Wyoming: As we reported in 1999, the mountain plover is classified as common in Wyoming, with breeding known or suspected in 20 of 28 latitude/longitude blocks and an estimated population of 1,500 individuals. Additional inventories have been conducted in Wyoming that confirm the current presence of mountain plovers at many of the previously reported locations. For example, surveys

conducted in the Powder River Basin in 2001 in preparation for the Wyodak Coal Bed Methane project found 15 mountain plovers (Good *et al.* 2001, Keinath and Eble 2001), and surveys conducted on the Thunder Basin National Grassland found about 20 adults in 2001 (P. Deibert, Service, pers. comm. 2002). Knopf (in litt. 2001) reported that mountain plovers may be more common than previously believed, particularly in Carbon County. From 1999 and 2000, totals of 159 and 105 mountain plover adults were reported from Sweetwater and Carbon Counties respectively, with many fewer individuals reported from Albany, Bighorn, Fremont, Lincoln, Natrona, Park, Sublette, and Washakie Counties (P. Deibert in litt. 2002). This is the best available population estimate for Wyoming.

New Mexico: The 1999 proposed rule reported that most current mountain plover records were from northern New Mexico locations. Additional surveys have confirmed mountain plovers in the locations previously reported (Reeves 1998, 1999, 2000), which included 11 plovers on Navajo Nation Tribal lands. Surveys conducted by Hawks Aloft (2001a, b) found mountain plovers in previously unsurveyed areas of Cibola and Sandoval Counties, and in Taos County. Five of the confirmed breeding sites in Taos County were on Gunnison's prairie dog towns (Hawks Aloft 2001b). Hawks Aloft (2001b) concluded that there is potential for large numbers of mountain plovers in Taos County.

Nebraska: In 2002, the Rocky Mountain Bird Observatory located 64 sites along 320 km (200 mi) of roads and private holdings with 116 adults (F. Knopf pers. comm. 2002). The Observatory estimates that there are approximately 100 nests in the area, and upgrades the estimate of the Nebraska mountain plover population estimate to probably 200 birds.

Other Breeding Areas

Mountain plover breeding was confirmed on a Mexican prairie dog town in 1999, in Nuevo Leon, Mexico (F. Knopf in litt. 1999). We have no substantive additional information to provide regarding other breeding areas reported in the 1999 proposed rule.

Winter Distribution

The 1999 proposed rule provides detailed information regarding the distribution and abundance of mountain plovers on their winter habitat. We concluded that mountain plovers are most numerous in the Central and Imperial Valleys of California. All new information we have reviewed confirms the findings in the 1999 proposed rule. Some of the additional inventories include Wunder and Knopf (in draft) reporting 4,037 mountain plovers in the Imperial Valley in 2001, and a total of 3,421 mountain plovers found during a 9-day survey in the Imperial Valley beginning in late January 2002 (S. Myers, AMEC-Earth and Environmental, pers. comm. 2002).

Total Mountain Plover Population Abundance and Trend Estimates

As previously reported, Knopf (1996b) estimated the North American mountain plover population to be between 8,000 and 10,000 birds. At the time of his estimate, only a 1994 count from California was available. Applying the same assumptions using the more recent winter counts would yield a similar estimate (Hunting *et al.* (in press), Shuford *et al.* 2000, Wunder and Knopf (in draft), S. Myers pers. comm. 2002). We are not aware of any other total population estimates. It now appears that more mountain plovers are wintering in the Imperial Valley than the Central Valley, which is probably the result of habitat loss at other California historic wintering areas (Wunder and Knopf (in draft)). Edson and Hunting (1999) reviewed recent search efforts and records for the Central Valley in California, and classified the mountain plover as rare and local, exceedingly rare, or accidental, for all locations, but admitted that the difficulty in locating mountain plovers may partially contribute to the lack of records.

New research now reports that mountain plover numbers at two historically recognized breeding strongholds (*i.e.*, Phillips County, Montana, and the Pawnee in Colorado) are now small or nearly absent (Dinsmore 2001, F. Knopf pers. comm 2002).

Breeding on Cultivated Fields

The mountain plover is attracted to manmade landscapes (*e.g.*, sod farms and cultivated fields) that mimic their natural habitat associations, or sites with little vegetative cover (*e.g.*, other agricultural lands and alkali flats). Land management practices on cultivated fields may include periods when fields are fallow, idle, or barren. If these fields remain fallow, idle, or barren during April and May, mountain plovers may choose these fields for nesting. Agricultural fields with residual cover less than 10 centimeters (4 inches) tall from March through May also may be attractive to plovers. Spring tilling practices to plant crops or control weeds may then destroy mountain plover nests and eggs (Tim McCoy, Colorado Natural Heritage Program, in litt. 2001; Shackford and Leslie 1995; Shackford *et al.* 1999; Knopf 1996; Knopf and Rupert 1999). Because adults are able to escape from farm machinery, adult survival is considered to be high. While mountain plovers may re-nest on these fields, re-nesting by birds is rarely as successful as first attempts, and mountain plovers will likely abandon nests when the crop grows too tall (Knopf 1996).

Breeding adults, nests, and chicks have been observed on cultivated fields in Colorado, Kansas, Nebraska, Oklahoma, and Wyoming (T. McCoy in litt. 2001, Shackford and Leslie 1995, Shackford *et al.* 1999). Between 1986 and 1995, Shackford *et al.* (1999) inventoried cultivated fields in 8 States within the breeding range of the mountain plover; 97 percent of all nests observed were in Colorado, Kansas, Oklahoma, and southeastern Wyoming. During this inventory, 52 nests were found in these 4 States, with 50 percent of the nests on fallow or bare fields, 23 percent on wheat fields, and the remainder on milo, forb, and corn fields. Although mountain plovers are nesting on cultivated fields in eastern Colorado and adjacent States, a study (Shackford *et al.* 1999) of 46 nests on cultivated fields found that 31 nests failed. The fate of the remaining 15 nests was undetermined. Of the 31 failed nests, 22 nests (48 percent of total) were destroyed by farm machinery. None of the nesting attempts could be documented as successful.

As a result of the inventory, Shackford *et al.* (1999) concluded that fewer birds nest in cultivated fields in northern latitudes because cropland acreage is relatively sparse in Montana and all but the southeastern corner of Wyoming, there is a shorter growing period, and spring wheat planted in northern latitudes is disturbed more frequently than the winter wheat planted in the south. They also noted that the short intervals between disturbances for spring wheat in the north would not normally allow enough time for breeding, nesting, and rearing young. Therefore, it appears that little risk to mountain plovers is posed by farming practices in Montana or Wyoming (except southeastern Wyoming), or by farming practices for dryland winter wheat or irrigated crops at other locations (J. Shackford pers. comm. 1999, F. Knopf pers. comm. 1999).

Previous Federal Action

We addressed the previous Federal actions in the 1999 proposed rule.

Higher priority listing actions precluded listing work on the mountain plover during Fiscal Years 2000 and 2001. On October 16, 2001, Earthjustice (representing the Biodiversity Legal Foundation, Biodiversity Associates, and Center for Native Ecosystems) submitted a 60-day Notice of Intent to sue to the Secretary of the Department of the Interior and the Fish and Wildlife Service Regional Director for failure to meet listing deadlines for the mountain plover, as required by section 4(b)(6)(A) of the Act. The Service responded to Earthjustice on December 21, 2001, with a commitment to reopen the comment period on the listing proposal by September 30, 2002. This date was subsequently extended to November 30, 2002.

In the February 16, 1999, proposed rule (64 FR 7587) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period for the proposed rule was scheduled to end on April 19, 1999, but was extended to June 21, 1999 (64 FR 19108) to ensure all interested parties had an opportunity to submit comments on the proposal. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Several newspaper articles appeared in Montana, Wyoming, and Colorado following our distribution of background materials to print media. The Service also solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and issues relating to the biological and ecological information for the mountain plover. We received a total of 194 written comments on the 1999 proposed rule. We have reviewed each of these comments and will consider them in developing a final rule.

Public hearings were requested in Nebraska by the U.S. Forest Service; in Montana by the Phillips County Prairie Ecosystem Action Council, the Phillips County Board of County Commissioners, and Erin Crowder; and in Wyoming by the Park County Board of County Commissioners, Wheatland Irrigation District, Wyoming Farm Bureau Federation, Laramie County Conservation District, Platte County Resource District, Antelope Grange, Mountain Valley Livestock, Inc., Ultra Resources, and John and Phyllis Thalken.

Public hearings were held at the following locations and dates:

- Billings, Montana, May 26, 1999.
- Malta, Montana, May 25, 1999.
- Greeley, Colorado, May 25, 1999.
- Lamar, Colorado, May 26, 1999.
- Casper, Wyoming, June 2, 1999.

Notifications of these public hearings were advertised in the following newspapers:

- Greeley Tribune, Greeley, Colorado, May 5, 1999.
- Lamar Daily News, Lamar, Colorado, May 6, 1999.
- Pueblo Chieftain, Pueblo, Colorado, May 6, 1999.
- Billings Gazette, Billings, Montana, May 7, 1999.
- Bozeman Daily Chronicle, Bozeman, Montana, May 7, 1999.
- Great Falls Tribune, Great Falls, Montana, May 7, 1999.
- Independent Record, Helena, Montana, May 7, 1999.
- Lewistown News Argus, Lewistown, Montana, May 5, 1999.
- Phillips County News, Malta, Montana, May 5, 1999.
- Wyoming Tribune Eagle, Cheyenne, Wyoming, May 3, 1999.
- Casper Star-Tribune, Casper, Wyoming, May 7, 1999.

We received written and verbal comments from State and Federal elected officials, State and Federal agencies, non-governmental organizations, and private citizens. Those who have submitted comments on this subject do not need to resubmit their comments. We will respond to all comments received when we issue a final rule.

Peer Review

In compliance with the July 1, 1994, Service Peer Review Policy (59 FR 34270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and issues relating to the supportive biological and ecological information for the mountain plover proposed listing rule published in 1999. We considered the responses received from the reviewers in developing this document. To satisfy our peer review policy for this document, and to implement a pilot process adopted by us on August 21, 2000, we have solicited the assistance of Sustainable Ecosystems Institute of Portland, Oregon, to provide the required independent peer review. The purpose of such peer review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this supplemental 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 listing and special regulations.

We will consider all comments and information received during the 60-day comment period on this supplemental proposed rule in a final decision on the listing action. Accordingly, the final determination may differ from the proposed rule and this document.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424), set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). We addressed each of these factors in the 1999 proposed rule. Here, we provide only new pertinent information for each of these factors.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Historical and Current Conversion of Grassland in Breeding Range

In the 1999 proposed rule, we provided statistics from the NRCS to show rangeland conversion from 1982 to 1992. We have now reviewed the most current records of rangeland conversions from 1992 to 1997 also available from the NRCS (*http://www.nhq.nrcs.usda.gov/NRI;* K. Musser, NRCS, in litt. 2000). Rangeland decreased during this period by 28,531 ha (70,500 ac) in Colorado; 2,428 ha (6,000 ac) in Kansas; 45,730 ha (113,000 ac) in Montana; 6,880 ha (17,000 ac) in Nebraska; 3,157 ha (7,800 ac) in Oklahoma; and 7,851 ha (19,400 ac) in Wyoming (Service in litt. 2000). Further, a moratorium on sodbusting on State school lands in Montana was rescinded in 1998, which may promote additional conversions in an effort to maximize revenue on State school lands, and meet the objective for acres in production recommended by the Governor's Vision 2005 Task Force on Agriculture (L. Hanebury pers. comm. 2002). The total conversion reported for 1992 to 1997 is small (about 0.07 percent) relative to the total rangeland reported from the above States, and the area of mountain plover habitat converted is unknown due to the lack of vegetative and topographic details regarding each grassland parcel that was converted. While we cannot quantify the acres of mountain plover habitat that have been converted, the records we examined show that

grassland conversion continues at present. For example, grassland conversion in Blaine County, Montana, has recently occurred, with about 809 ha (2,000 ac) converted in 2000, and another 809 to 1,012 ha (2,000 to 2,500 ac) scheduled for conversion in 2002 (J. Peters, BLM, pers. comm. 2002). While mountain plovers were not known to occur on any of the parcels converted in Blaine County in 2000, the conversions occurred contiguous to grasslands with known nesting sites. Knowles (pers. comm. 2001) reports that a total of 13 percent of the land area in his Central Montana study area has been sod-busted from 1991 to 1999, and that mountain plovers have abandoned all but one of the sites that were converted.

In 1999, we also provided information regarding the conversion of grasslands to housing subdivisions, citing South Park, Park County, Colorado, as an example. We now have new information that increases our concern that housing development in South Park is a potential threat to mountain plovers and their habitat. Park County is one of the fastest growing counties in Colorado; population growth may double between 1998 and 2005, and may reach 102,600 people by 2020 (Granau and Wunder 2001). The population of mountain plovers in South Park is now estimated to be from 1,500 to 2,000 individuals, making this one of the largest remaining populations of mountain plovers known throughout their breeding range. Sixty-eight percent of mountain plover habitat is privately owned, and 32 percent of this has already been subdivided (Granau and Wunder 2001). The number of residential building permits in Park County tripled between 1991 and 1997. Most of these permits were issued in areas of Park County that are not occupied by mountain plovers, but some were issued in known breeding habitat (Hanson 1997; G. Nichols, Park County, Colorado, in litt. 1998). However, beginning in 1999, the number of building permits issued in areas considered to be mountain plover habitat (*i.e.*, South Park) exceeded those issued in other parts of the county (Granau and Wunder 2001). Both Sherman *et al.* (1996) and Granau and Wunder (2001) identified the vulnerability of known breeding sites to ongoing and residential development. The mountain plover is one of the species addressed during current conservation planning efforts in Park County, but full build-out of those sites currently subdivided would be detrimental to mountain plovers (Granau and Wunder 2001).

Cultivated Areas in Breeding Range as Potential Population Sinks

In the 1999 proposed rule, we stated that we believed that certain cultivated lands created population sinks for the mountain plover, which contributed to species decline. In an effort to better define the implications to mountain plover survival by nesting attempts in cultivated fields, research has been initiated on cultivated fields and rangelands in five counties in eastern Colorado (T. McCoy in litt. 2001). Field research completed in 2001 found 44 nests on cultivated fields and 48 nests on rangeland, confirming the Shackford *et al.* (1999) finding that croplands may represent suitable nesting habitat for mountain plovers. Analysis of research results will begin in 2003, following completion of field data collection, and evaluation of implications to mountain plover survival will be available in 2004. Because current agricultural practices conflict with the mountain plover nesting cycle, we believe they may represent a threat to mountain plover reproduction.

Historical Conversion of Grassland in Winter Range

We provided important details of grassland conversion in California in the 1999 proposed rule. We have learned that since 1997, an additional 3,966 ha (9,800 ac) of grasslands have been converted to dairy farming, orchards, and vineyards in the Central Valley (C. Davis, Service, in litt. 1999). Most of the conversion reported by Davis (in litt. 1999) occurred in the eastern part of the Central Valley, where historically fewer mountain plover sightings have occurred. However, we believe the anticipated urbanization of the Central Valley (see Hunting *et al.* (in press)) will result in the loss of habitat currently occupied by wintering mountain plovers.

We also have learned that the Imperial Valley of California is likely an example of the shift of mountain plover wintering use following loss of grassland habitat. Wunder and Knopf (in draft) believe that greater than 50 percent of all mountain plovers now winter in the Imperial Valley. They believe this shift to agricultural lands in the Imperial Valley probably followed the rapid and nearly complete loss of grassland habitat at historic wintering sites at California's interior and coastal locations. Much of the deterioration of natural habitat was ongoing while the Imperial Valley was being converted to agriculture, and migrating mountain plovers began exploiting the newly available cultivated lands in the Imperial Valley, rather than continuing west to historic wintering locales (*i.e.*, they were ''shortstopped'' (Wunder and Knopf (in draft)). Mountain plovers in the Imperial Valley now exclusively use alfalfa fields grazed by domestic livestock, or fallow fields, burned sod farms, and sprouting wheat fields. Water conservation, water transfer projects, burning restrictions, and urbanization associated with the North American Free Trade Agreement (NAFTA) may result in changes to agricultural practices (S. Vissman, Service, in litt. 2001). NAFTA is expected to generate increased trade growth in the Imperial Valley, and highway projects are now being planned to improve transportation efficiency (California Department of Transportation 2001). As a result of NAFTA, the Imperial County population is expected to nearly double by 2020 (California Department of Transportation 2001). As a result of the anticipated population growth and impacts to prime farmland, the American Farmland Trust designated Imperial County as 1 of the top 20 threatened major land resource areas in the nation (California Department of Transportation 2001). Between 1982 and 1992, 7,689 ha (19,000 ac) of land in Imperial County were converted to urban uses. The loss of farmland associated with the current level of urbanization in Imperial County has had no measurable impact to wintering mountain plovers, but we believe anticipated growth will result in additional loss of farmland and influence agricultural practices on remaining farmlands (S. Vissman in litt. 2001). Wunder and Knopf (in draft) believe that the modification of agricultural practices, cessation of domestic livestock grazing, or addition of more restrictions on agricultural burning would be detrimental to mountain plovers in the Imperial Valley.

Effects of Range Management on Mountain Plover Habitat

In 1999, we stated that currently accepted domestic livestock grazing management can be detrimental to mountain plover breeding habitat. We have learned mountain plover winter habitat on the Carrizo Plain Natural Area in California also has been adversely impacted by the failure to continue domestic livestock grazing activities. Historically, as much as 50 percent (50,587 ha (125,000 ac)) of these lands were suitable wintering habitat. Following consolidation of properties to establish the Carrizo Plain, livestock grazing rates were adjusted to promote restoration of native plant communities.

Following an increase in rainfall associated with El Niño events in recent years, the density of vegetation and dry residual matter now exceeds the limits tolerated by mountain plovers. The resistance to livestock grazing expressed by some segments of the public and the emphasis on native plant conservation have adversely affected opportunities to enhance mountain plover habitat. Recently, grazing has been restored to some areas of the Carrizo Plain and mountain plovers have begun to reoccupy these sites (S. Fitton pers. comm 2002). However, there probably is little more than 10 percent (10,117 ha (25,000 ac)) of the Carrizo Plain Area that is currently suitable habitat for mountain plovers (E. Marquis-Brong, BLM, in litt. 1999a).

Mountain plovers on the Pawnee in Colorado are closely associated with heavily grazed, drier sites. The Forest Service is beginning to review grazing management plans for the Pawnee to identify actions that would benefit the mountain plover (J. Sidle, Forest Service, pers. comm. 2002). Currently, there is no schedule for adoption or implementation of revised grazing management prescriptions.

Effects of the Decline of Burrowing Mammals on Mountain Plover Habitat

The 1999 proposed rule cited published literature to describe a strong association of mountain plovers with prairie dogs and kangaroo rats at numerous locations in their breeding and wintering range, and reported the historic losses and potential threats to prairie dogs and kangaroo rats. All new information we have describing the association of mountain plovers and prairie dogs confirms a strong association of mountain plovers with prairie dogs at numerous locations. We also now report that mountain plovers are found on white-tailed and Gunnison's prairie dog colonies (P. Deibert, Service, pers. comm. 2002; Hawks Aloft, Inc. 2001a).

On July 31, 1998, we were petitioned by the National Wildlife Federation to list the black-tailed prairie dog as a threatened species. On February 4, 2000, we published our 12-month finding on this petition (65 FR 5476) and estimated the historic and current population of the black-tailed prairie dog in Montana, Wyoming, and Colorado. This document supports our previous findings regarding the historic decline of prairie dogs. Sylvatic plague now appears to be the greatest threat to prairie dogs and mountain plover habitat, as the amount of prairie dog control and land use conversion impacting prairie dogs have appeared to decline.

We have no new information relating to burrowing rodents on mountain plover wintering range.

Oil, Gas, and Mineral Development in Mountain Plover Breeding Habitat

We addressed the potential for development of mineral resources and the associated impacts to mountain plovers in the 1999 proposed rule. We are now aware of nine authorized or proposed active natural gas and coal bed methane projects in Wyoming that occupy either known or potential mountain plover nesting habitat (*e.g.*, Continental Divide/Wamsutter II Natural Gas Project, Seminoe Road Coal Bed Methane) (P. Deibert in litt. 2002). We also have more thoroughly reviewed mountain plover nesting records from existing mining locations, and have determined they are not adequate to determine the effects of mine development and operation on mountain plover nesting success (P. Deibert pers. comm 2002). It also is conceivable that construction of drill pads and roads could possibly create additional mountain plover habitat, but only when human activities at the sites are compatible with mountain plover nesting behavior. Due to the anticipated rate of growth in this industry, we continue to believe that oil and gas development if not adequately mitigated, represents a potential threat to breeding mountain plovers.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

There is no new information relating to this listing factor.

C. Disease or Predation

There is no new information substantially changing the information presented in the 1999 proposed rule.

D. The Inadequacy of Existing Regulatory Mechanisms

There is no new substantial information relating to the value of other regulatory mechanisms to the conservation of the mountain plover. We have learned that the United States Shorebird Conservation Plan now assigns its highest conservation category score (5) to the mountain plover, one of five shorebirds receiving this ranking (Brown *et al.* 2001). The mountain plover also is designated as threatened by Mexico (S. Jewell, Service, in litt. 2000).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural Factors

New literature now reports that the predicted mean lifespan of a mountain plover is 1.92 years, and females can produce more than one clutch of eggs each year (Dinsmore 2001). The mountain plover's entire lifespan appears to be shorter than that of either the snowy plover (*Charadrius alexandrinus*) (Page *et al.* 1995) or piping plover (*Charadrius melodus*) (Haig 1992), but there is no mean lifespan prediction for any other shorebird (S. Haig, Clemson University, pers. comm. 2002). We are not aware of the implications of total lifespan for species persistence, but we believe a mean lifespan of less than 2 years influences opportunities to reproduce, seek alternate breeding and wintering sites, and engage in intraspecific behavior that may influence population recruitment. Further, the mountain plover's narrow range of habitat requirements combined with high degree of site fidelity (see the 1999 proposed rule) increases its vulnerability to impacts at traditional breeding locales. For example, Graul (1973, 1975) discussed the influence of climatic events on nesting mountain plovers during his research on the Pawnee. While he attributed as much as a 14 percent loss of nests to weather, and also reported the death of chicks to heat, he did not note any population level effects. However, because the average life span of a mountain plover is less than 2 years, and breeding does not occur until 1 year of age, an individual mountain plover will likely have only one breeding season to contribute to population recruitment. An individual mountain plover's contribution to recruitment may therefore be reduced or completely negated by the loss of nest, eggs, or young by natural or manmade events. Consequently, a short lifespan may aggravate the events that influence mountain plover conservation.

Manmade Factors

We have no new substantial information to provide relating to manmade factors.

Critical Habitat

In the 1999 proposed rule, we concluded that designation of critical habitat for the mountain plover was not prudent. Several court cases rendered since 1999 regarding critical habitat now require us to reevaluate the merits of critical habitat for the mountain plover. If designation of critical habitat

is prudent, we will develop a proposal to designate critical habitat for the mountain plover as soon as feasible, considering our workload priorities and available funding.

Available Conservation Measures

We summarized the potential conservation measures for the mountain plover in the 1999 proposed rule to include: Management of cultivated lands, implementing grazing plans, changing management of Conservation Reserve Program tracts, modifying seeding criteria for Conservation Reserve Program tracts, and providing habitat modification incentives to private landowners. Also as we reported in 1999, we are coordinating with the NRCS to explore ways to implement these measures on private land. We also summarized other conservation opportunities available under sections 4, 7, 9, and 10 of the Act, listed those Federal agencies we believe are most likely to be affected by a listing action (including the types of actions that may require section 7 consultation), and gave examples of some actions that either may be allowed, or prohibited, under section 9.

Special Rule

When a wildlife species is listed as threatened, the general regulations at 50 CFR 17.31 apply the section 9 prohibitions of the Act, including the take prohibitions, to the species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' any listed wildlife species (*i.e.*, to harass, harm pursue, hunt, shoot, wound, kill, trap, or collect any threatened or endangered species or attempt to engage in any such conduct) (16 U.S.C. 1532 (19)).

Section 4(d) of the Act (16 U.S.C. 1533) provides that, whenever a species is listed as a threatened species, the Secretary of the Department of the Interior will issue regulations deemed necessary and advisable to provide for the conservation of the species. This can be accomplished through a ''special rule'' tailored to meet the needs of a particular threatened species. In that case, the general regulations applying most section 9 prohibitions to threatened species do not apply to that species, and the special rule contains the prohibitions necessary and appropriate to conserve that species.

Such regulations generally are issued and published as special rules in the **Federal Register** along with or following a listing. In this case, we have chosen to concurrently publish this proposed special rule along with the reopening of the comment period for our proposal to list the mountain plover as threatened. We are proposing this special rule under the authority of section 4(d) of the Act containing the prohibitions necessary to provide for the conservation of the mountain plover. The prohibitions we propose do not include the take of mountain plover during certain routine farming practices until December 31, 2004, in the southern portion of the breeding range. During this period, ongoing research will be completed to determine the impact of farming practices on cultivated fields to mountain plover nesting success within the southern portion of the breeding range. The finalization of this special rule is contingent upon the results of research now under way and the final listing of the mountain plover as a threatened species. If this proposed special rule is finalized, the general regulations at 50 CFR 17.31 would not apply to the mountain plover. However, almost all of the prohibitions contained in the general regulations are included in this proposed special rule. Our rationale for a proposed special rule follows.

The February 16, 1999, proposal to list the mountain plover as a threatened species (64 FR 7587) identifies the take of mountain plovers on cultivated fields as one of many possible reasons for the decline of the mountain plover population. The proposed listing rule cites literature describing the loss of mountain plovers to spring tilling practices (see 64 FR 7587). Briefly, the mountain plover is attracted to manmade landscapes that mimic its natural habitat associations. Land management practices on cultivated fields in their breeding range may include periods when fields are fallow, idle, or barren. If these fields remain fallow, idle, or barren during April and May, mountain plovers may choose these fields for nesting, and subsequent spring tilling practices may then destroy mountain plover nests and eggs (Shackford and Leslie 1995, Knopf 1996, Shackford *et al.* 1999, Knopf and Rupert 1999, T. McCoy in litt. 2001).

Because mountain plover nests, eggs, and chicks are being taken by spring tilling practices, but the implications of this loss to the mountain plover population are not known, the USGS–BRD, in coordination with the Service, the Colorado Division of Wildlife, and the Colorado Farm Bureau, initiated scientific research in 2001 on cultivated fields and rangelands. Field research will not be completed until 2003, and analysis of results will not be initiated until 2004.

Justification

We have had numerous discussions with Dr. Fritz Knopf with the U.S. Geological Survey-Biological Resources Division and agricultural producers regarding the significance of spring tilling losses to the mountain plover population. The reasons for our identification of spring tilling as a potential threat are: The general observation by many farmers that the birds are nesting on their fields, the widespread application of these farming practices throughout the southern portion of the mountain plover's breeding range, and the observation of mountain plovers being taken by routine farming practices (T. McCoy in litt. 2001, Shackford *et al.* 1999). However, because there is no current literature comparing mountain plover productivity on noncultivated, traditionally used grasslands with productivity on cultivated fields, the influence of tilling practices on mountain plover recruitment cannot be estimated at this time.

The Colorado Farm Bureau, the Wildlife Management Institute, the U.S. Geological Survey-Biological Resources Division, and the Service recognize that nest success on cultivated fields deserves further study (R. Leachman pers. comm. 2000). Consequently, the USGS–BRD initiated field research in 2001 to evaluate the effects of farming practices on mountain plovers by comparing productivity on cultivated fields with that occurring at noncultivated, traditionally used grassland sites (T. McCoy in litt 2001). In order to generate sufficient data for analysis, the research will continue for 3 consecutive years. We are proposing that incidental take of nesting mountain plovers on cultivated fields in the southern portion of the plover's breeding range be exempt from the prohibitions of section 9 of the Act while the research is being conducted, and for 1 year following to allow data analysis. We believe this interim exemption will allow completion of research to help define the influence of agriculture on nesting mountain plovers, encourage private landowners to participate in research directed at a declining species (*e.g.*, allow researchers access to privately owned land), and contribute to the conservation of the species on private land by further defining farming practices that can have positive or negative effects on the species.

This proposed special rule will allow us to work with the Colorado Farm Bureau, local agricultural producers, and local government representatives to

determine the specific types of agricultural practices occurring within the breeding range of the mountain plover, determine which of these practices have an effect on mountain plover nesting success, and identify mechanisms that can be implemented to minimize or preclude the impact of the take on the species.

During 2002, researchers continued to monitor the breeding activity of mountain plovers throughout eastern Colorado. The length of the breeding season varied between 2001 and 2002 with the 2001 season ending in July and the 2002 season continuing into August. The longer 2002 season was attributable to extreme drought conditions in eastern Colorado. Nest success did not vary substantially between cropland and rangeland in 2001, but did show slightly higher nest success on rangeland in 2002. Predation was the major cause of nest failure, except in 2001, when agricultural practices destroyed more nests on croplands. Of rangeland nests, nest success was slightly higher on grassland with prairie dog colonies than on grasslands without prairie dog colonies. The researchers suggest that direction in 2003: (1) Focus studies more precisely on locales where plovers nest in higher densities to maximize sample sizes, (2) rigorously test the emerging pattern of comparable nest success between rangeland and croplands, and (3) test the predictions that plover densities and nest success are highest on prairie-dog towns (F. Knopf in litt 2002).

Provisions of the Proposed Rule

Term

We propose to exempt specific types of agricultural practices from the prohibitions on take under 50 CFR 17.31 until December 31, 2004. During this time, the research now ongoing will be continued to determine the effects of different types of farming practices on mountain plover nesting productivity. The finalization of this special rule is contingent upon a final listing of the mountain plover and the results of the scientific research.

Take Prohibitions

We propose that virtually all of the prohibitions under section 9 of the Act that apply to threatened species continue to apply to the mountain plover, to the same extent that they apply to other threatened species under our general regulations at 50 CFR 17.31, except that certain activities would be exempted.

Exempted Activities

We propose to include in this rule the following exemptions from take until December 31, 2004:

The incidental take of mountain plovers during routine farming practices by non-Federal entities on existing summer fallow, cropland idle, or cropland harvested (as defined by U.S. Department of Agriculture, National Agricultural Statistics Service (USDA–NASS) 1997 Census of Agriculture—Appendix (1)), from April 1 to June 30 in Colorado, Kansas, Nebraska, Oklahoma, and Laramie and Goshen Counties, Wyoming.

During the term of this special rule, research will be ongoing on existing summer fallow, cropland idle, and cropland harvested (as defined by U.S. Department of Agriculture, National Agricultural Statistics Service (USDA–NASS) 1997 Census of Agriculture—Appendix (1)) to compare productivity at these sites with that at noncultivated, traditionally used grassland sites to determine the influence that different farming practices have on mountain plover reproductive success. We are targeting these types of activities because previous researchers (Shackford *et al.* 1999, Knopf and Rupert 1999, T. McCoy in litt. 2001) have demonstrated some loss of mountain plover nests on cultivated fields due to agricultural activities.

This special rule would allow us to develop a better understanding of potential conflicts between agricultural practices and nesting mountain plovers, as well as assist in the development of management recommendations that can either preclude or mitigate the effects of these agricultural practices. Situations where mountain plovers coexist with ongoing agriculture may provide valuable insight into habitat conditions required by them, and the specific types of agricultural practices that are compatible with or enhance successful mountain plover reproduction.

We have maintained records of known occurrences of mountain plovers, as well as information on areas that may have high potential for habitat enhancement to improve nesting success throughout their breeding range. We have accumulated information regarding the historic and current distribution of mountain plovers. This information, combined with the information gained from the research discussed in this proposed rule, will assist in development of conservation actions that make the best use of the mountain plover's demonstrated nest site fidelity and in identification of those lands that have the highest potential for habitat enhancement. With this knowledge, our ability to implement an effective long-term recovery program will be enhanced.

Application of Research Results

The proposed exemptions in this proposed special rule would provide for the development of meaningful long-term conservation efforts for the mountain plover on private land. We are optimistic that this rule would invite participation by State and local governments, agricultural interests, and the general public to help minimize risks to the mountain plover. The 3-year research project will provide information that may eventually lead to one or more of the following possibilities:

(1) Extension of the exemption of take resulting from farming practices covered by this rule beyond December 31, 2004;

(2) Identification of management recommendations that avoid ''take'' under 50 CFR 17.31;

(3) Modification of the scope of exemptions under the 4(d) rule (such as changes to the area covered by the exemption, the seasonal time periods during which the exemption is in effect, or the farming practices covered by the exemption);

(4) Development of Habitat Conservation Plans or Safe Harbor Agreements under section 10 of the Act; or,

(5) Expiration of this 4(d) rule without renewal (*i.e.,* no special regulations providing exemptions to the take prohibitions).

We will provide notice in the **Federal Register** of any such outcomes, and we will propose further rulemaking if appropriate.

Effects of the Special Rule

Future Section 7 Consultations

This special rule does not change the obligation of Federal agencies to consult with us under section 7 of the Act concerning actions they authorize, fund, or carry out that may affect listed species, including the mountain plover.

We believe that the exemption proposed in this special rule will allow completion of scientific research to help define the influence of agriculture on the mountain plover population, encourage private landowners to participate in research efforts directed at this declining species, and contribute to the conservation of the species on private land by further defining farming practices that can have negative and positive effects on the species.

Once completed, this research will assist us in the implementation of

available conservation strategies, such as Habitat Conservation Plans, Candidate Conservation Agreements with Assurances, or Safe Harbor agreements. The research findings will help identify farming practices that may either enhance or prove detrimental to mountain plover nesting success. We intend to pursue and encourage the development of these conservation strategies using recommendations derived from this research.

Section 10(a)(1)(B) authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities such as agriculture, surface mining, and urban development. Incidental take permits must be supported by a Habitat Conservation Plan that identifies conservation measures that the permittee agrees to implement to conserve the species, usually on the permittee's lands. Such conservation measures may include, for example, no-till practices that leave stubble too tall to be attractive to breeding mountain plovers. On summer fallow, cropland idle, or cropland harvested, the type of farm implement used and the timing of the use may be significant in reducing harm to plovers. These and other techniques to avoid take of plovers or protect plovers can be examined by producers in the development of a Habitat Conservation Plan, Candidate Conservation Agreement with Assurances, or Safe Harbor agreement. A key element in our review of each of these conservation strategies is a determination of the plan's effect upon the long-term conservation of the species. We would approve a Habitat Conservation Plan, and issue a section 10(a)(1)(B) permit, as appropriate, if the plan would minimize and mitigate the impacts of the take and would not appreciably reduce the likelihood of the survival and recovery of that species in the wild.

Public Comments Solicited

We intend that any final action resulting from this document will be as accurate and as effective as possible. Therefore, we are again seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this document, particularly concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the mountain plover;

(2) The location of any additional breeding, wintering, or migration sites, including areas in Mexico and Canada;

(3) Additional information concerning mountain plover distribution, population size, and/or population trend;

(4) Information regarding current or planned land uses, and their possible beneficial or negative impact to the mountain plover or its habitat (*e.g.*, agricultural conversions, oil and gas development, land exchanges, range management, conservation plans, conservation easements);

(5) Information regarding mountain plovers on their wintering habitats (*e.g.*, preferential use of natural versus agricultural habitats, habitat distribution and abundance, daily routines, night roosts, site fidelity, population abundance);

(6) Additional biological or physical elements that best describe mountain plover habitat and that could be considered essential for the conservation of the mountain plover (*e.g.*, burrowing rodent colonies, vegetation, food, topography);

(7) Information relative to mountain plover distribution and productivity on cultivated lands, short grass prairie, and shrub-steppe habitats;

(8) Alternative farming practices that will reduce or eliminate the take of mountain plovers;

(9) Other management strategies that will conserve the species throughout its range;

(10) Information regarding the benefits of critical habitat designation;

(11) Comments regarding the adverse or beneficial consequences of adopting special regulations regarding take of the mountain plover on cultivated lands in their breeding range;

(12) The types of agricultural practices on cultivated fields that are compatible with maintenance of mountain plover breeding habitat;

(13) Any evidence of successful and/or unsuccessful nesting by mountain plovers on cultivated fields;

(14) Any evidence indicating that additional areas of cultivated lands should be considered for inclusion in this rule;

(15) Any evidence of mountain plovers nesting on cultivated fields on Native American Tribal lands; and

(16) Information regarding grazing practices on Federal lands within the range of the mountain plover and the impacts of this on the plover.

In addition to the information solicited above, we are seeking private landowners interested in participating in the research discussed in the section of this document that explains the proposed special rule. As discussed previously, finalization of the special rule is contingent upon the results of continuing research. Permission from private landowners to allow access to their lands is a critical component of conducting this research project.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations, or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address in **ADDRESSES.**

Final promulgation of the protective regulations on this species will take into consideration the comments and any additional information received by us. Such communications may lead to a final regulation that differs from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be made at least 15 days prior to the close of the public comment period.

Clarity of the Proposed Rule

Executive Order 12866 requires each agency to write regulations and notices 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 or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed 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 notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov.*

Required Determinations

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). We also have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with regulations adopted pursuant to section 4(d) when they accompany listing actions. The proposed special regulation for the mountain plover is being developed as an integral component of the mountain plover listing action we proposed in 1999 (64 FR 7587), and for which we are giving notification of the reopening of the comment period today. Consequently, we have determined that neither an Environmental Assessment nor Environmental Impact Statement is necessary for this proposed special regulation to comply with the National Environmental Policy Act and 516 DM.

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act and assigned Office of Management and Budget clearance number 1018–0094, which expires July 31, 2004. 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 number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.21 and 17.22.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (Executive Order 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. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statements of Energy Effects is required.

References Cited

As we stated above, we have a complete list of all references cited in this document, as well as others, that are pertinent to the mountain plover. You may request this list from the Assistant Field Supervisor at the Grand Junction, Colorado Field Office (see **ADDRESSES**).

Author

Numerous Service biologists contributed to this document. You should direct any questions to Robert Leachman (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend 50 CFR part 17, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1554; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under ''BIRDS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
		* * *	* * *	*	*		
BIRDS							
		* * *	* * *	*	*		
Plover, mountain	*Charadrius montanus*.	U.S.A. (western)	Entire	T	.....	NA	17.41(c)
		* * *	* * *	*	*		

3. Amend § 17.41 by adding paragraph (c) to read as follows:

§ 17.41 Special rules-birds.

* * * * *

(c) Mountain plover (Charadrius montanus).

(1) *What activities are restricted or not allowed to protect the mountain plover?* All of the prohibitions of § 17.31 (a) and (b) and exemptions of § 17.32 are applicable to take of the mountain plover except where identified in paragraph (c)(2) of this section.

(2) *What activities are allowed under this special rule for the mountain plover?* The take prohibitions of § 17.31 will not apply to the following:

(i) The incidental take of mountain plovers during routine farming practices on summer fallow, cropland idle, or cropland harvested between April 1 and June 30 in Colorado, Kansas, Nebraska, Oklahoma, and Laramie and Goshen Counties, Wyoming, while the rule in this paragraph (c) is in effect; and,

(ii) Activities covered under a valid permit issued by the Fish and Wildlife Service for conducting research, educational purposes, scientific purposes, enhancement of or propagation for survival of the mountain plover, zoological exhibition, and other conservation purposes in accordance with § 17.32 and under a cooperative agreement with a State under section 6 of the Act (16 U.S.C. 1535), if applicable.

(3) *How long is this special rule in effect?* The rule in this paragraph (c) is effective until December 31, 2004.

(4) *Does this special rule apply to mountain plovers throughout their range?* This special rule applies only to mountain plovers in certain areas of the southern portion of their breeding range (see paragraph (c)(2) of this section). It does not apply to wintering range.

(5) *What types of agricultural activities are covered under this rule?* Agricultural activities conducted on summer fallow, cropland idle, or cropland harvested are covered under the rule in this paragraph (c). Agricultural activities include mechanical practices such as tilling and other machinery-type activities that are used to prepare soil, plant crops, and control weeds.

Dated: November 29, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–30801 Filed 12–4–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI25

Endangered and Threatened Wildlife and Plants; Determinations of Prudency for Two Mammal and Four Bird Species in Guam and the Commonwealth of the Northern Mariana Islands and Designations of Critical Habitat for One Mammal and Two Bird Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis of the proposed designations of critical habitat for the Mariana fruit bat and the Micronesian kingfisher on Guam, and the Mariana crow on Guam and Rota. The proposed designations of critical habitat were published in the **Federal Register** on October 15, 2002 (67 FR 63738). The draft economic analysis shows that over a 10-year period, the estimated total direct cost on Guam would be approximately $1.4 million and the estimated total direct cost on Rota would be approximately $149,000. We are now providing notice of extending the comment period to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until January 6, 2003.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the above address and telephone 808/541–3441. Copies of the draft economic analysis also are available on Guam at the Nieves M. Flores Memorial Library, East O'Brien Drive, Hagatna, Guam, phone 671/475–4753, and on Rota at the Northern Marianas College, Songsong, Rota, telephone 670/532–9477. For further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

A review of the status of 12 Guam and Commonwealth of the Northern Mariana Islands (CNMI) vertebrate species was published on May 18, 1979 (44 FR 29128). This review, which led to the listing of nine species in 1984, resulted from three separate petitions to the Service filed by three Governors or Acting Governors of Guam in 1978, 1979, and 1981, and a fourth petition filed by the International Council for Bird Preservation in 1980. In a proposed rule published on November 29, 1983 (48 FR 53729), the Service determined endangered status for 9 of the 12 species in the 4 petitions. The final listing rule for the nine species, including the six species treated in the current proposed rule, was published on August 27, 1984 (49 FR 33881).

We published a proposed rule to designate critical habitat for these six endangered species on Guam in the **Federal Register** on June 14, 1991 (56 FR 27485). However, we withdrew this proposed rule on April 4, 1994 (59 FR 15696), because most of the lands proposed as critical habitat had by this time been incorporated into the Guam National Wildlife Refuge overlay lands. The Service, therefore, determined that critical habitat designation was not prudent because it would not provide these species with any benefit beyond that already provided by the refuge overlay lands.

Since the withdrawal of the proposed critical habitat, several judicial decisions in court cases examining critical habitat determinations have rejected rationales used by the Service in ''not prudent'' findings. These cases included *Natural Resources Defense Council* v. *U.S. Department of the Interior,* 113 F. 3d 1121 (9th Cir. 1997) involving the threatened coastal California gnatcatcher, and *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp.2d 1280 (D. Haw. 1998) involving 245 listed plant species. The decisions in these cases rejected the Service's rationales of ''increased threat'' and ''no benefit'' in the case of the gnatcatcher, and of ''increased threat,'' ''no benefit on private lands,'' and ''no additional benefit on federal lands'' in the case of the Hawaiian plants.

On April 3, 2000, the Marianas Audubon Society and the Center for Biological Diversity filed a suit to challenge the Service's 1994 withdrawal of critical habitat for the six species. On September 7, 2000, the Service filed a motion to voluntarily remand the withdrawal and non-prudency decision based on the subsequent court decisions. This motion set a deadline of June 3, 2003, for the Service to determine prudency and designate final critical habitat, if prudent, for these six species. On January 25, 2002, the Government of Guam filed a motion for preliminary injunction against the Service to prevent our re-consideration of the 1994 ''not prudent'' critical habitat determinations for the six species. On February 8, 2002, the Service filed its opposition to the Government of Guam's motion for preliminary injunction. On April 16, 2002, the Guam District Court dismissed the Government of Guam's motion for preliminary injunction and issued a ruling upholding the settlement based on a voluntary remand.

On December 7, 2001, we mailed letters to four major landowners (Chamorro Land Trust Commission, U.S. Air Force, U.S. Navy, and Guam National Wildlife Refuge) on Guam informing them that the Service was in the process of determining the prudency of designating critical habitat for the little Mariana fruit bat, Mariana fruit bat, Mariana crow, Guam broadbill, Micronesian kingfisher, and the bridled white-eye and requested from them information on management of lands that currently support or recently

(within the past 30 years) supported these six species. The letters contained a fact sheet describing the six listed species and critical habitat, the 1991 proposed rule to designate critical habitat, the 1994 withdrawal of the proposed rule, and a questionnaire designed to gather information about land management practices, which we requested be returned to us by January 14, 2002. We received three responses to our landowner mailing with varying types and amounts of information on current land management activities. Some responses included natural resource management plans, cooperative agreements, and descriptions of management activities such as brown treesnake and feral ungulate control. The information provided in the responses was considered and incorporated into the proposed rule published in the **Federal Register** on October 15, 2002 (67 FR 63738).

We propose designating approximately 10,053 hectares (ha) (24,840 acres (ac)) in two units on the island of Guam for the Mariana fruit bat and the Micronesian kingfisher. For the Mariana crow, we propose designating approximately 9,325 ha (23,042 ac) in two units on the island of Guam and approximately 2,462 ha (6,084 ac) in one unit on the island of Rota in the CNMI. On Guam, the boundaries of the proposed critical habitat units for the Mariana fruit bat and Micronesian kingfisher are identical and the boundaries of the proposed critical habitat for the Mariana crow are contained within these identical boundaries. On Rota, critical habitat is proposed only for the Mariana crow.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is now available on the Internet and from the mailing address in the Public Comments Solicited section below.

We are now announcing the availability of the draft economic analysis and the extension of the comment period for the proposed designation of critical habitat for the Mariana fruit bat and the Micronesian kingfisher on Guam, and the Mariana crow on Guam and Rota. We will accept public comments on the proposal and the associated draft economic analysis until the date specified in **DATES.** The extension of the comment period gives all interested parties the opportunity to comment simultaneously on the proposal and the associated draft economic analysis.

Public Comments Solicited

We are specifically requesting comments on the following elements of the draft economic analysis:

(1) Whether indirect economic costs, as discussed in sections 6.3–1.4 and 6.3–1.5 of the draft economic analysis, are likely to be incurred, and if so, by whom and in what amounts;

(2) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in sections 6.3–1.4 and 6.3–2.2 of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the benefits of the proposed critical habitat designation;

(3) The extent to which the description of the economic costs of the proposed critical habitat designation to the United States Navy and Air Force are complete and accurate; and

(4) The extent to which military training and readiness may be impacted by the proposed critical habitat designation, as discussed generally in sections 6.3–1.2 and 6.3–1.3 of the draft economic analysis.

We will accept written comments and information during this extended comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., PO Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *Guam_crithab@r1.fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AI25'' and your name and return address in your e-mail message.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address under **ADDRESSES** and phone number under **FOR FURTHER INFORMATION CONTACT** above.

Author(s)

The primary author of this notice is Eric VanderWerf (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 26, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–30802 Filed 12–4–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 234
Thursday, December 5, 2002

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development: One Hundred and Thirty Sixth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and thirty-sixth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8 a.m. to 1 p.m. on January 6, 2003 in the ground floor meeting room of the National Association of State Universities & Land Grant Colleges (NASULGC), at 1307 New York Avenue, NW., Washington, DC.

The program will be devoted to a discussion of a humanitarian compact for developing countries, a progress report on the previous meeting's long-term training agenda item, and further USAID reports on the status of agricultural or rural livelihoods and the involvement of universities.

The meeting is free and open to the public. Those wishing to attend the meeting or obtain additional information about BIFAD should contact Mr. Lawrence Paulson, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–073, Washington DC 20523–2100 or telephone him at (202) 712–1436 or fax (202) 216–3010.

Lawrence Paulson,

USAID Designated Federal Officer for BIFAD, Office of Agriculture and Food Security, Bureau of Economic Growth, Agriculture & Trade.

[FR Doc. 02–30816 Filed 12–4–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

National Appeals Division

Notice of Request for Approval of an Information Collection

AGENCY: National Appeals Division, USDA.

ACTION: Proposed collection.

SUMMARY: Notice. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the National Appeals Division (NAD) to request approval of a voluntary information collection for the purpose of setting customer service standards.

DATES: Comments on this notice must be received by February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jerry Jobe, USDA/NAD Suite 1100, 3101 Park Center Drive, Alexandria, VA 22302, (703–305–2514).

SUPPLEMENTARY INFORMATION:

Title: National Appeals Division Customer Service Survey.

OMB Number: Not yet designated.

Type of Request: Approval of a new information collection.

Abstract: Executive Order 12862 requires Federal Agencies to identify the customers who are, or should be served by the Agency and survey those customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Agencies will then use the results to the survey to establish customer service standards.

The National Appeals Division (NAD) of the U.S. Department of Agriculture was established by the Secretary of Agriculture on October 20, 1994, by Secretary's Memorandum 1010–1, pursuant to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, section 271 et seq. (October 13, 1994). The Act consolidated the appellate functions and staffs of several USDA Agencies to provide for independent hearings and reviews of adverse Agency decisions. NAD is responsible for all administrative appeals arising from program activities of assigned Agencies, as well as such other administrative appeals arising from decisions of Agencies and offices of USDA as may be assigned by the Secretary. NAD appeals involve program decisions of the Farm Service Agency, Risk Management Agency, Natural Resources Conservation Service, Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service.

Need of the Information: The information collection in this request is essential for NAD to comply with the requirement of Executive Order 12862 to set customer service standards. The information collected is used only by authorized representatives of USDA.

Estimate of Burden: Public reporting burden for this collection of information is estimate to average 0.25 hours per response.

Respondents: The primary respondents will be individuals and/or households who are participants in Farm Service Agency and Rural Housing Service programs. A small percentage of respondents may be businesses, institutions or state and local governments.

Estimated Number of Respondents: 1176.

Estimated Number of Responses per Respondent: 1.00.

Estimated Total Annual Burden on Respondents: 294.

Copies of this information collection can be obtained from Jerry Jobe, National Appeals Division at (703) 305–2514.

Send comments regarding, but not limited to the following: (a) Whether the collection of the information is necessary for the proper performance of the functions of NAD, including whether the information will have a practical utility; (b) the accuracy of NAD's estimates of the burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) 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 technological collection techniques, or other forms of information technology. Comments should be addressed to Jerry Jobe, Deputy Director for Planning, Training and Quality Control, USDA/NAD, Suite 1100, 3101 Park Center Drive, Alexandria, VA 22302. All responses to this notice will be summarized and included in the request for OMB

approval. All comments will also become a matter of public record.

Dated: September 4, 2002

Roger J. Klurfeld,

Director, National Appeals Division.

[FR Doc. 02–30835 Filed 12–4–02; 8:45 am]

BILLING CODE 3410–WY–M

DEPARTMENT OF AGRICULTURE

Forest Service

Santa Fe National Forest, Jemex Ranger District; New Mexico; San Diego Range Allotment Permit Issuance

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Santa Fe National Forest announces its intent to prepare an Environmental Impact Statement for Managing Cattle Grazing on the San Diego Range Allotment located on the Jemez Ranger District, New Mexico. The EIS will analyze the potential environmental impacts of managing cattle grazing on the San Diego Cattle Allotment. The EIS will be prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321–4370a, and the National Forest Management Act 16 U.S.C. 1600–1614, and their respective implementing regulations.

DATES: Comments concerning the scope of the analysis must be received on or before January 13, 2003. The draft EIS is expected to be available for public review in September 2003. The final EIS is expected to be published in December 2003.

ADDRESSES: Send written comments and suggestions on the proposal, or requests to be placed on the project mailing list, to Rita Skinner, Natural Resource Coordinator, Jemez Ranger District, Santa Fe National Forest, PO Box 150, Jemez Springs, NM 87025.

FOR FURTHER INFORMATION CONTACT: Derek Padilla, Range Staff, Jemez Ranger District, at 505–829–3535.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

There is an underlying need to: Protect non-renewable archaeological resources, minimize conflicts between recreation users and cattle during high use recreation periods, protect riparian areas, and minimize soil and vegetation impacts, while contributing to the social and economic needs associated with traditional grazing practices in Northern New Mexico. The Rescission Act of 1995 (Pub. L. 104–19), Section 504(a)(b)(c), directs the Forest Service to create and adhere to a schedule to complete NEPA for grazing activities and other related issues. In assessing this grazing allotment, the Forest Service will consider the protection of various resources within the allotment and meet the intent of the Rescission Act.

Proposed Action

The Santa Fe National Forest proposes to revise the grazing program on the San Diego Cattle Allotment to address archaeological and other resource concerns on the allotment. Grazing would be authorized through issuance of a new 10-year term grazing permit. The overall grazing system(s) currently in place would remain essentially unchanged. Approximately 2–4 miles of new fence would be constructed and eight miles of existing fence would be reconstructed. Six to eight new water developments (dirt tanks) would be constructed in upland pastures and about two miles of new pipeline and four new water troughs would be installed to address various riparian, recreation, scenery, and archaeological objectives. The number of cattle and grazing seasons would remain essentially unchanged except for a small reduction in head months (through changing the season of use) to accommodate a one-week reduction in spring riparian area grazing.

Possible Alternatives

Alternatives include: No Action (No change from existing management)—Grazing would continue at the current level of 252 head from May 1 to November 30, 116 head from December 1 to April 30, and 12 bulls year-round. A second alternative, the Forest Service proposed action is described in the preceding paragraph. A third alternative would eliminate grazing in a pasture containing a high density of archaeological sites. A fourth alternative would eliminate cattle grazing in high use recreation areas. A fifth alternative (No Grazing) would completely eliminate cattle grazing on the allotment.

Responsible Official

John Peterson, District Ranger, Jemez Ranger District Santa Fe National Forest, P.O. Box 150, Jemez Springs, NM 87025, is the responsible official for this decision. He will document his decision in a Record of Decision.

Nature of Decision To Be Made

The District Ranger of the Jemez Ranger District will decide whether or not livestock grazing activities would be allowed to continue on the allotment, and if so, the decision will identify: the grazing seasons, the timing and duration of grazing, structural range facilities, forage utilization levels, mitigation measures, monitoring and evaluation, and the implementation schedule.

Scoping Process

A project scoping letter was distributed in 1999 to interested individuals and organizations, and was published in the Jemez Thunder newspaper. The proposed project has been listed on the Santa Fe National Forest Schedule of Proposed Projects beginning in December 1998 and as recently as December 2002. Consultation with Native American Tribes was initiated three years ago and is ongoing. Cattle grazing activities associated with this allotment were discussed in detail at public meetings and throughout the scoping and planning effort for the Jemez National Recreation Area, which overlaps this allotment.

Preliminary Issues

Heritage Resources (Archaeology)—Heritage resources has been identified as a key issue. This allotment contains high concentrations of significant archaeological sites. Cattle trailing through sites, congregating, bedding down, trampling, rubbing against standing features, etc. can result in adverse effects to sites including long-term cumulative impacts. The proposed action and alternatives 3 and 5 address this issue to varying degrees. Other issues include:

Recreation—A portion of this allotment is within the Jemez National Recreation Area. The presence of cattle in popular dispersed recreation areas can disrupt the recreational and scenic enjoyment for some visitors to the area. The proposed action and alternatives 4 and 5 address this issue to varying degrees.

Riparian, Water, Fish habitat—Cattle grazing, permittee vehicle use, gathering, and trailing of cattle may affect riparian areas by slowing the rate of recovery of these areas. These same activities may affect water quality and aquatic habitat, particularly when combined with impacts associated with a high level of dispersed recreation use. The proposed action and alternatives 4 and 5 address this issue to varying degrees.

Permits or Licenses Required

Livestock grazing on National Forest System lands is authorized under FSM 2230.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will include a minimum of 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 27, 2002.

John F. Peterson,

District Ranger, Jemez Ranger District.

[FR Doc. 02–30805 Filed 12–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Idaho Panhandle National Forest's Idaho Panhandle Resource Advisory Committee will meet Friday, December 20, 2002 at 9 a.m. in Coeur d'Alene, Idaho for a field trip and business meeting. The business meeting is open to the public.

DATES: December 20, 2002.

ADDRESSES: The meeting location is the Idaho Panhandle National Forest's Supervisor's Office, located at 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Official, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: The meeting agenda includes reviewing a completed project on site during the field trip and reviewing project proposals for fiscal year 2003 during the business meeting. The public forum begins at 1 p.m.

Dated: Novembner 29, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 02–30804 Filed 12–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, December 16, 2002. The meeting will include routine business, a presentation on Klamath National Forest's fire fuels management activities and the California Division of Forestry and Fire Protection community programs. A presentation by Great Northern Corporation and the Shasta Valley Resource Conservation District will also be made. The meeting will be preceded by a field trip to the Klamath River Community Corridor fuels reduction project. No business will be conducted during the field trip.

DATES: The meeting will be held December 16, 2002 from 4 p.m. until 6 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: November 27, 2002.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 02–30806 Filed 12–4–02; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: December 10, 2002; 11:30 a.m.–4:30 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues

relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: December 2, 2002.

Carol Booker,

Legal Counsel.

[FR Doc. 02–30897 Filed 12–03–02; 10:53 am]

BILLING CODE 8230–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Consolidated Commands are:

1. MG John C. Atkinson, Deputy Commanding General (RC)(ARNG), First Army.
2. MG Raymond D. Barett Jr., DCSOPS&T.
3. Mr. Michael F. Bauman, Director TRADOC Analysis Center.
4. MG John R.S. Batiste, Commanding General, 1st Infantry Division.
5. Mr. Laurence H. Burger, Director, Space and Missile Defense Battle Lab.
6. MG Julian H. Burns, Acting Chief of Staff, FORSCOM.
7. Mr. William H. Campbell, III., Deputy Chief of Staff, Resource Management.
8. LTG Joseph M. Cosumano, Jr., Commanding General.
9. Mr. William J. Cooper, MTMC Transportation Engineering Agency.
10. Dr. Charles N. Davidson, Director, USA Nuclear and Chemical Agency.
11. LTG Michael L. Dodson, Deputy Commanding General.
12. MG James E. Donald, Deputy Chief of Staff, G1, FORSCOM.
13. Dr. Henry C. Dubin, Chief Scientist.
14. Mr. Thomas J. Edwards, Program Manager.
15. GEN Larry R. Ellis, Commanding General, FORSCOM.
16. Mr. Hugh M. Exton, Jr., Director, Installation Management Agency—SW.
17. BG Charles W. Fletcher, Jr., Commanding General, 3rd Corps Support Command.
18. MG Warren L. Freeman, Commander, DC–NG.
19. BG R. V. Geraci, Deputy Commanding General Operations/ Deputy Commmanding General, Army Space Command.
20. BG Thomas R. Goedkoop, Assistant Deputy Chief of Staff, G3/5/7.
21. BG Elder Granger, ERMC Commanding General and U.S. Army Europe Command Surgeon.
22. Mr. Jess F. Granone, Director, Space and Missile Defense Technical Center.
23. LTG James R. Helmly, Commanding General, USARC.
24. BG Keith M. Huber, Deputy Commanding General (AC), First Army.
25. MG Robert C. Hughes, Deputy Commanding General (RC) (ARNG), First Army.
26. LTG Joseph R. Inge, Commanding General, First Army.
27. Mr. Robert J. Jefferis, Asst. Deputy Chief of Staff for Resource Management.
28. Ms. Vicky Jefferis, Deputy Chief of Staff, G–8.
29. MG Anthony R. Jones, Chief of Staff.
30. LTG Larry R. Jordan, Deputy Commanding General/Chief of Staff.
31. MG Terry E. Juskowiak, Commander, CASCOM.
32. BG James A. Kelley, Chief of Staff, USA Reserve Command.
33. Mr. J. Stephen Koons, Assistant Deputy Chief of Staff, G–4.
34. Dr. Michael J. Lavan, Director, Advanced Technology Directorate.
35. Mr. William R. Lucas, Jr., Deputy to the Commander, MTMC.
36. Mr. Mark L. Lumer, Principal Assistant Responsible for Contracting/ Contracting & Acquisition Office.
37. Mr. Ronald G. Magee, Director of Operations, (TRADOC Analysis Center).
38. Mr. Maxie L. McFarland, Deputy Chief of Staff for Intelligence.
39. LTG David D. McKiernan, Commanding General, Third Army.
40. Mr. Richard A. McSeveney, Deputy to the Commander for Installation Support.
41. Mr. John C. Metzler Jr., Director of Cemetery Operations.
42. MG Daniel G. Mongeon, Deputy Chief of Staff, G–4.
43. MG William E. Mortensen, Commanding General, 21st Theater Support Command.
44. BG James H. Pillsbury, Deputy Chief of Staff, Logistics.
45. Mr. Jerry V. Proctor, Deputy for Futures.
46. BG Marilyn A. Quagliotti, Deputy Chief of Staff, Information Management & Commander, 5th Signal Command.
47. Mr. William C. Reeves, Jr., Director, Integration/Interoperability for Missile Defense and Assistant to the Deputy Commanding General, RDA.
48. Mr. William Rich, Deputy & Technical Director.
49. Mr. Rodney Robertson, Director, Sensors Directorate.
50. BG Richard J. Rowe, Jr., ADCSDEV.
51. MG Ricardo S. Sanchez, Commanding General, 1st Armored Division.
52. Mr. Robert E. Seger, ADCS for Training Policy, Plans & Programs.
53. MG Gary Speer, Deputy Chief of Staff, Operations.
54. MG Henry W. Stratman, Deputy Commanding General, Third Army.
55. MG Alan W. Thrasher, DCSDEV.
56. MG John M. Urias, Deputy Commanding General, Research, Development and Acquisition.
57. BG(P) Roy M. Umbarger, Deputy Commanding General (ARNG).
58. Ms. Donna K. Vargas, Director of Operations.
59. LTG William S. Wallace, Commander, V Corps.
60. BG Bennie E. Williams, Deputy Commanding General, 21st Theater Support Command.
61. BG Robert M. Williams, Commanding General, 7th Army Training Command.
62. MG Charles E. Wilson, Deputy Commanding General, USARC.

63. BG David T. Zabecki, Commander, 7th Army Reserve Command.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–30836 Filed 12–4–02; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Pub. L. 106–554]

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board (DNFSB or Board) implements these Guidelines pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106–554, and government-wide Guidelines issued by the Office of Management and Budget (OMB), OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 FR 8452 (Feb. 22, 2002) (OMB Guidelines). The purpose is to ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies that are subject to the Paperwork Reduction Act, 44 U.S.C. 3502(1).

As is the intent of OMB's Guidelines, DNFSB's Guidelines will focus primarily on the dissemination of substantive information rather than information pertaining to basic agency operations. The Guidelines also apply to information other parties provide to the Board, if the other parties seek to have the Board rely upon or disseminate this information or if the Board decides to rely upon or disseminate the information.

These Guidelines are suggestions, recommendations, and policy views of the DNFSB. They are not intended to be, and should not be construed as, legally binding regulations or mandates. They do not create any right or benefit, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies (including the Board or DNFSB), officers, or employees, or any person.

Changes to the final Guidelines in this notice have been made in response to OMB's comments on the Board's draft Guidelines issued September 17, 2002. No public comments were received by the Board.

DATES: The Guidelines are effective October 1, 2002.

ADDRESSES: The Board will publish its information quality standards on its Web site: *http://www.dnfsb.gov*.

FOR FURTHER INFORMATION CONTACT: Joseph Neubeiser, Chief Information Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (202) 694–7000.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Definitions

The definitions set forth below are consistent with the definitions provided in the OMB Guidelines. Unless otherwise stated, information dissemination outside the scope of these definitions is not subject to these Guidelines.

A. ''Information'' means any communication or representation of knowledge such as facts or data, not opinion, in any medium or form. Information includes textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition also includes information that the Board disseminates from its Web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include Board opinions or conclusions. This definition also does not include information that the Board has indicated is someone's individual opinion.

B. ''Dissemination'' means agency initiated or sponsored distribution of information intended for the public; excluding:

1. Information not intended for public dissemination;

2. Distribution intended only for government employees or contractors;

3. Procedural, operational, policy, and internal documents prepared for the management and operations of the Board that are not primarily intended for public dissemination;

4. Information designated as ''Classified,'' ''Unclassified Controlled Nuclear Information,'' or ''Official Use Only'';

5. Outdated or superseded information;

6. Government information intended for intra- or inter-agency use or sharing;

7. Information items intended for inter-agency transmittals or congressional compliance and provided to members of the public as a courtesy (*e.g.*, weekly site representative reports, technical reports, letters);

8. Responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law;

9. Other correspondence with individuals or persons not intended for public dissemination, including, but not limited to, written agreements with particular entities or parties, responses to specific requests for advisory opinions or other advice;

10. Press releases, fact sheets, press conferences or similar communications in any medium that announce, support the announcement, or give public notice of information the Board has disseminated elsewhere;

11. Archival records (*e.g.*, library materials);

12. Public filings, including, but not limited to, submissions in rulemakings or other Board proceedings or matters, requests, petitions, applications, supporting materials, etc. The Guidelines do not apply when the Board distributes this information simply to provide the public with quicker and easier access to materials submitted to the Board that are publicly available. This will generally be the case if the Board has not authored the filings, is not distributing the information in a manner that suggests that the Board endorses or adopts the information, and does not indicate in its distribution that it is using or proposing the use of the information to formulate or support a regulation, guidance, or other Board decision or position;

13. Opinions presented to Congress in response to Congressional requests or statutes and not intended for dissemination to the public;

14. Subpoenas or discovery orders issued in proceedings or court litigation, Orders, opinions, amicus, and other briefs. Adjudicative processes also include factual allegations by the staff during the investigative and litigative

phases of cases brought by or participated in by the Board. Because there are well-established procedural safeguards and rights to address the quality of factual allegations and adjudicatory decisions, and to provide persons with an opportunity to contest decisions, these Guidelines do not impose any additional requirements on the Board during adjudicative proceedings and do not provide parties to such proceedings any additional rights of challenge or appeal;

15. Legally required disclosures, notices, or other information disseminated by persons or entities other than the Board, where the text of such disclosures, notices, or information is not explicitly prescribed or specified by the Board itself; and

16. Studies, statements, other issuances, or publications by Board employees, officials, contractors, consultants, or others who may be or have been paid, employed, or retained by the Board, where the issuance or publication is not represented as being an official position of the Board or used by the Board in support of its official position. Conversely, if the Board has directed a third party to disseminate information or retains the authority to review and approve the information upon release, then the Board has sponsored the dissemination of the information and the information may be considered a Board dissemination.

C. ''Information dissemination product'' means any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, the agency disseminates to the public. This definition includes any electronic document, storage media, or Web page.

D. ''Quality'' is an encompassing term comprising utility, objectivity, and integrity.

E. ''Utility'' refers to the usefulness of the information to its intended users, including the public. When transparency of information is relevant for assessing the information's usefulness from the public's perspective, transparency is addressed to the extent practicable and appropriate in the Board's review of the information. There may be legal limitations, however, on the Board's ability to make publicly available the data or methods underlying a particular information dissemination product, and persons seeking access to such data or methods must comply with certain Board requirements and procedures for requesting such access.

F. ''Objectivity'' involves two distinct elements, presentation, and substance:

1. ''Objectivity'' includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner, including whether the information is presented within a proper context and identifying the source of the disseminated information to the extent possible in light of confidentiality protections, if any. In a scientific, financial, or statistical context, the Board may make supporting data and models publicly available so the public can assess whether there may be reasons to question the objectivity of the sources. Where appropriate, data should have full, accurate, transparent documentation, and error sources affecting data quality should be identified and disclosed to users, subject to any applicable restrictions on disclosure.

2. ''Objectivity'' also involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, original and supporting data are normally generated, and the analytic results are normally developed, using sound statistical and research methods.

3. To ensure ''objectivity'' in instances where the Board is responsible for disseminating ''influential scientific, financial, or statistical information,'' the Board shall ensure transparency of data and methods to facilitate the reproducibility of such information by qualified third parties, consistent with any applicable limitations on disclosure.

4. When relying upon third party information, the Board will notify the public if the disseminated information has not been reviewed by the Board, but that the third party attests that the quality of the information is consistent with the Data Quality Act and the OMB Guidelines;

G. ''Integrity'' refers to the security of information, *i.e.*, protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

H. ''Influential,'' when used in the phrase ''influential scientific, financial, or statistical information,'' means that the Board can reasonably determine that dissemination of information, prepared for public distribution, will have or does have a clear and substantial impact on important public policies or important private sector decisions. Whether a particular Board information dissemination product is ''influential'' will depend on the nature of the issues for which the Board is responsible and the relationship of the information dissemination product to those issues.

In non-rulemaking contexts, the Board will consider two factors-breadth and intensity-in determining whether information is influential. The Board will consider whether the information affects a broad range of parties. Information that affects a broad, rather than narrow, range of parties is more likely to be influential. The Board will also consider the intensity of the information's impact. Information that has a modest impact on affected parties is less likely to be influential than information that can have a significant impact.

The definition applies to ''information'' itself, not to decisions that the information may support. Even if a decision or action by the Board is itself very important, a particular piece of information supporting it may or may not be ''influential.''

I. ''Reproducibility'' means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. As provided in the OMB Guidelines, this standard does not apply to all agency information or data, but only to ''influential scientific or statistical information,'' if any, disseminated by DNFSB.

1. Original or supporting data: The Board may identify and/or limit the specific types of such data that can practicably be ''reproduced,'' given ethical, feasibility, or confidentiality constraints and, in doing so, may consult, as needed, with relevant scientific and technical communities. The Board shall assure reproducibility for those kinds of original and supporting data according to commonly accepted scientific, financial, or statistical standards.

2. Analytic results relating to original or supporting data: All analytic results shall undergo robustness checks through the Board's rigorous internal quality review process.

3. Analysis of risks to human health, safety, and the environment disseminated by the Board, if any: The Board will apply, as appropriate and feasible, the standards set forth in the Safe Drinking Water Act, 42 U.S.C. Section 300g-1(b)(3)(A), and when promulgating regulations the Board will apply, as appropriate and feasible, the standards set forth in the Safe Drinking Water Act, 42 U.S.C. Section 300g-1(b)(3)(B).

J. ''Affected persons'' are people who may use, benefit from, or be harmed by the disseminated information.

II. Information Quality Principles

The following quality principles apply as a matter of policy to information disseminated by the Board:

A. Information that the Board prepares for public dissemination, including factual or statistical data, shall meet basic standards of quality, including objectivity, utility, and integrity.

B. The Board treats information quality as an integral part of achieving its performance goals and shall take appropriate steps to incorporate information quality criteria into information dissemination practices.

C. The specific quality standards that the Board adopts in a particular case shall be appropriate for the type of information being disseminated.

These Guidelines explain how the Board achieves information quality, objectivity, utility, and integrity. The Guidelines also describe the administrative mechanism by which affected persons may seek correction of Board disseminated information that they believe does not comply with Section 515, OMB Guidelines, or Board Guidelines.

III. Board's Role in Public Information Dissemination

Section 315 of the National Defense Authorization Act for Fiscal Year 2001, 42 U.S.C. Section 2286d requires the Board to:

(a) Public availability and comment.

Subject to subsections (g) and (h) and after receipt by the Secretary of Energy of any recommendations from the Board under section 2286a of this title (section 312 of the Atomic Energy Act), the Board promptly shall make such recommendations available to the public in the Department of Energy's regional public reading rooms and shall publish in the **Federal Register** such recommendations and a request for the submission to the Board of public comments on such recommendations. Interested persons shall have 30 days after the date of the publication of such notice in which to submit comments, data, views, or arguments to the Board concerning the recommendations.

(b) Response by Secretary.

(1) The Secretary of Energy shall transmit to the Board, in writing, a statement on whether the Secretary accepts or rejects, in whole or in part, the recommendations submitted to him by the Board under section 2286a of this title (section 312 of the Atomic Energy Act), a description of the actions to be taken in response to the recommendations, and his views on such recommendations. The Secretary of Energy shall transmit his response to the Board within 45 days after the date of the publication, under subsection (a) of this section, of the notice with respect to such recommendations or within such additional period, not to exceed 45 days, as the Board may grant.

(2) At the same time as the Secretary of Energy transmits his response to the Board under paragraph (1), the Secretary, subject to subsection (h) of this section, shall publish such response, together with a request for public comment on his response, in the **Federal Register**.

(3) Interested persons shall have 30 days after the date of the publication of the Secretary of Energy's response in which to submit comments, data, views, or arguments to the Board concerning the Secretary's response.

(4) The Board may hold hearings for the purpose of obtaining public comments on its recommendations and the Secretary of Energy's response.

(c) Provision of information to Secretary.

The Board shall furnish the Secretary of Energy with copies of all comments, data, views, and arguments submitted to it under subsection (a) or (b) of this section.

IV. The Board's Commitment to Quality Information Dissemination

In carrying out its functions, the Board strives to ensure that the information it prepares for public dissemination reflects a level of quality appropriate to the anticipated use of the information. The Board disseminates information consistent with applicable disclosure restrictions (*e.g.*, classified information).

V. Pre-Dissemination Information Quality Review

The Board will review the quality (including objectivity, utility, and integrity) of information before it is disseminated and treat information quality as integral to every step of the Board's development of information, including creation, collection, maintenance, and dissemination.

When appropriate, the Board will demonstrate in its Paperwork Reduction Act clearance packages that each information collection will result in information that will be collected, maintained, and used in a way consistent with the OMB and Board information quality standards.

Internal agency review: The Board performs robust internal reviews to ensure information quality—including objectivity, utility, and integrity—before such information is disseminated.

1. Information disseminated to the public by the Board is normally subject to one or more levels of internal staff, supervisory, or Board review for quality before such information may be disseminated.

2. The number of levels of internal quality review applied in a particular case depends on the nature, scope, and purpose of the information to be disseminated.

Public comment: In rulemakings and certain other agency matters (*e.g.*, Recommendations), information or data may also be subject to public comment. This public comment process provides an opportunity for interested parties, including persons who may be most affected by the dissemination, to corroborate or dispute the objectivity, utility, or integrity of the information or data. In these cases, the Board may provide public access to the underlying data or methods used by the Board (*e.g.*, statistical models, assumptions), to the extent the Board deems relevant to information quality and consistent with controlling law.

VI. Development of Quality Information and Data

Information quality is integral to the development of information that will ultimately be disseminated, including its creation, collection, and maintenance. This process shall enable the Board to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information. The strategies that the Board employs to develop quality information and data include, for example:

A. Using a variety of methods and sources to solicit relevant and reliable information, such as:

1. Voluntary and compulsory methods;

2. Invitations for public comment;

3. Public hearings; and

4. Meetings with public groups, labor representatives and organizations, and industry and professional groups.

B. Soliciting public comment specifically on paperwork burden estimates of information collection activities sponsored by the Board and subject to the Paperwork Reduction Act, if applicable.

C. Conducting independent legal, economic, or statistical research as the Board deems appropriate, using an array of government and private commercial and non-profit databases, agency surveys and questionnaires, etc.

VII. Transparency of Underlying Data and Methods

Consistent with applicable laws, regulations, orders, and policies, the Board shall make underlying data and methods (*e.g.*, sources and assumptions) used for ''influential scientific or statistical information'' available to the public as is appropriate. OMB Guidelines, para. V.3.b.ii.

Where public access to ''influential scientific or statistical'' data and methods will not occur due to other compelling interests, the Board shall

apply rigorous checks to analytic results and document what checks were undertaken. The types of these checks, and the level of detail for documentation thereof, shall depend on the nature of the issues for which the Board is responsible. OMB Guidelines, para. V.3.b.ii.B.ii.

To the extent that underlying data or methods are not part of the Board's public record or otherwise published or publicly available, persons seeking access to such data or methods are required to follow applicable Board requirements and procedures for seeking such access. In all cases, the interest in the transparency of the Board's data and methods shall not override other compelling interests such as national security, privacy, trade secrets, intellectual property, and other confidentiality protections. OMB Guidelines, para. V.b.3.ii.B.i.

VIII. Integrity of Board Information and Data

To preserve the integrity of information and data that the Board may ultimately disseminate, the Board takes appropriate measures to ensure that the security of information and data is not compromised while it is being collected, maintained, or used by the agency. OMB Guidelines, para. V.4. These measures are intended to be consistent with legal requirements such as the Computer Security Act, 40 U.S.C. 759; the Government Information Security Reform Act, 44 U.S.C. 3531, *et seq.*; the Privacy Act, 5 U.S.C. Section 552a; and any other applicable laws, regulations, orders, agreements, or guidance.

These measures extend to Board contractors, consultants, experts or others to the extent such information or data are shared with them on a non-public basis.

IX. Documentation

When necessary or appropriate, the Board substantiates the quality of the information it has disseminated through documentation or other means appropriate to the information. OMB Guidelines, para. III.2.

With respect to pre-dissemination review, this documentation may include intra-or inter-agency memoranda or communications, or other records or materials, including, where applicable, underlying data or methods, demonstrating that the information has been reviewed internally by appropriate agency staff or officials before it is disseminated to the public.

As provided in the OMB Guidelines, the Board will submit a report to OMB describing the number, nature, and resolution of information correction requests by each January 1, beginning in 2004.

X. Administrative Mechanism for Seeking Correction of Information

The Board shall provide and maintain a mechanism in compliance with the OMB Guidelines by which affected persons may seek timely correction of information maintained and disseminated by the Board. See Appendix A for details.

XI. Compliance, Reporting, and Effective Date

The Board's Chief Information Officer, or other designated Board official, shall be responsible for agency compliance with these Guidelines.

The Board shall respond to complaints in a manner appropriate to the nature and extent of the complaint. Examples of appropriate responses include personal contacts via letter or telephone, form letters, press releases, or mass mailings that correct a widely disseminated error or address a frequently raised complaint.

The Board shall submit (and, when required, post on its Web site, publish in the **Federal Register**, or otherwise make available) all reports, or notice thereof, required by Section 515 and the OMB Guidelines. Such reports shall include an annual fiscal year report submitted to the Director of OMB on the number and nature of complaints, if any, received by the Board regarding agency compliance with the OMB Guidelines and how the agency resolved such complaints. This annual report is to be submitted no later than January 1 following the end of the relevant fiscal year, with the first report due January 1, 2004.

Effective Date: Pursuant to Section 515 and paragraph III.4. of the OMB Guidelines, these Board Guidelines shall become effective October 1, 2002. Previously released information that does not meet the information dissemination requirements of these Guidelines are considered archived information and are not subject to these Guidelines (*e.g.*, DNFSB files, publications available on the Web site). If a particular distribution of information is not covered by these Guidelines, the Guidelines may still apply to a subsequent distribution of the information in which the Board adopts, endorses, or uses the information to formulate or support a regulation, guidance, or other Board decision or position.

A. To the extent these Guidelines prescribe procedures for the pre-dissemination quality review of Board information, such procedures shall apply only to information that the Board first disseminates on or after that date.

B. The Guidelines do not apply to outdated or superseded Board information that is provided as background information but no longer reflects Board policy or influences Board decisions.

C. To the extent these Guidelines prescribe a Board administrative mechanism for affected persons to seek correction of information disseminated by the Board, that mechanism shall apply only to information that the Board disseminates on or after that date, regardless of when the Board first disseminated the information.

Appendix A

Administrative Correction Mechanism

The Defense Nuclear Facilities Safety Board (DNFSB, Board) strives to ensure that the information it disseminates to the public is of the highest quality, objectivity, utility, and integrity. To this end, the Office of Management and Budget (OMB) and the DNFSB have issued Guidelines for ensuring and maximizing the quality of information disseminated by the DNFSB, and in accordance with Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106–554 (Section 515). You may view these Guidelines through the following Web link: *http://www.dnfsb.gov*. Persons affected by non-exempted Board information disseminated on or after October 1, 2002, may request that the Board correct allegedly incorrect information.

How To Seek Correction of Board Information Dissemination Products:

If you are seeking to obtain correction of information disseminated (as defined by the Board's Information Quality Guidelines) by the Board on or after October 1, 2002, because you believe the information does not comply with the Information Quality Guidelines issued by OMB or DNFSB, please submit your request, with the subject ''Section 515 Request,'' by e-mail to: *MAILBOX@DNFSB.gov*

If you send the Board an e-mail, you should know that e-mail is not necessarily secure against interception before it reaches the Board's e-mail system. Therefore, you may prefer instead to deliver or mail your Section 515 request to the following address: Chief Information Officer, C/O Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

Whichever method you use, your request must specifically:

- Identify the information you believe does not comply with the OMB or Board Information Quality Guidelines;
- Explain why you believe the information should be corrected. If possible, provide specific recommendations for how the information should be corrected; and
- Describe how you are affected by the alleged information error.

Requests for correction that are specific and provide evidence to support the need for correction will enable a timely response.

Requesters should be aware that they bear the ''burden of proof'' with respect to the necessity for correction as well as with respect to the type of correction sought.

To learn how we may disclose any information that you provide, please read our Privacy Policy at *http://www.dnfsb.gov/privacy.htm.* To submit a correction request through this process, you must be an ''affected person'' (*i.e.*, someone who may use, benefit from, or be harmed by the disseminated information) and your request must relate to ''information'' that is ''disseminated'' by the Board within the meaning of the Board Guidelines.

You may not use these procedures to request correction of matters which are not ''dissemination'' of information as outlined in Section I.B. of the Board's Guidelines.

How We Will Handle Your Section 515 Request?

Processing Your Initial Request

Once the appropriate Board staff member has received your request, the Board will provide an initial response to your request within 60 calendar days. If the Board is unable to provide an initial response within the 60 day period, the Board will notify you of the estimated date for an initial response. The Board will also provide you with an explanation of why its determination is delayed.

Delay in the Board's response may be required if you modify your original request, if we need to clarify your request, or if we need to consult with other offices or agencies that may have an interest in the matter. The Board shall be solely responsible for determining how to respond to your request.

Initial Board Response

The Board's initial response will either grant or deny your request, in whole or part, and make appropriate corrections, if any. If your request relates to information in which there is an opportunity for public comment (*e.g.*, Recommendations), you may be required to seek correction of the information through public comment, and your request will be referred to the responsible Board staff for consideration and incorporation into the record of the relevant proceeding. When appropriate, in lieu of an individualized response to your request, the Board may issue or provide you a form letter, press release, or mass mailing that corrects a widely disseminated error or that addresses a frequently raised complaint. Responses may also be posted on the Board's Web site.

In all cases, the correction process shall serve to address the genuine and valid needs of the Board and its constituents without disrupting Board processes. The Board may reject claims that are made in bad faith, without justification, unlikely to have substantial future impact (*e.g.*, harmless error), frivolous, or speculative. The Board shall undertake only the degree of correction that the Board concludes is appropriate for the nature of the information involved. In making this determination, the Board will consider such factors as the significance of the error on the use of the information and the magnitude of the error. The Board will also consider the error's relationship to Board priorities. The Board is not required to change, or in any way alter, the content or status of information simply based on the receipt of a request for correction. The Board need not respond substantively to frivolous or repetitive requests for correction. Furthermore, the Board may not respond to requests that concern information not covered by the Guidelines or from a person whom the information does not affect.

Seeking Reconsideration of the Initial Response

If you disagree with the Board's initial response, you will have 30 calendar days to appeal (*i.e.*, file for reconsideration within the agency). The Board will provide a response to your request for reconsideration within 60 calendar days, unless it notifies you of a later date and explains the reason(s) for the delay. The official conducting the second level of review shall not be the same official that responded to the initial request for correction or that prepared the subject information.

If the Board agrees with the appeal, it will also take steps to notify the public of its decision.

Certain disseminations of information include a comprehensive public comment process (*e.g.*, Recommendations, notices of proposed rulemaking, regulatory analyses, and requests for comment on an information collection subject to the Paperwork Reduction Act). The administrative correction mechanism described in these Guidelines does not apply to dissemination of such a document. Persons questioning information disseminated in such a document must submit comments as directed in that document. However, if the public comment process for the document will take a long time, the Board may consider complaints regarding the quality of disseminated information (as defined by the Board's Guidelines) for review under this administrative correction mechanism.

When engaged in rulemaking, the Board will utilize the notice and comment process required by the Administrative Procedure Act. This process will satisfy the Section 515 administrative correction mechanism requirement. Affected persons must address any correction requests through the rulemaking comment process. Correction requests made through the Section 515 mechanism will not be considered. Information or studies relied upon and cited in rulemaking will be addressed through the rulemaking notice and comment process.

If there is an existing process for reconsideration of a particular sort of information dissemination by the DNFSB, DNFSB will make use of that process.

The Guidelines are not intended to and do not provide any right to judicial review.

Availability of Section 515 Reports

No later than each January 1, beginning in 2004, the agency is required to submit an annual fiscal year report to the OMB Director on the number and nature of Section 515 correction requests received by the Board and how the agency resolved those requests. Copies of these reports will be made publicly available through the Board's Web page.

Dated: December 2, 2002.

John T. Conway,

Chairman.

[FR Doc. 02–30837 Filed 12–4–02; 8:45 am]

BILLING CODE 3670–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–50–A (Auction No. 50); DA 02–3234]

Auction No. 50 Narrowband PCS Spectrum Auction Scheduled for March 26, 2003; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of 54 Personal Communications Service (PCS) licenses in the 900 MHz band (''narrowband PCS'') scheduled to commence on March 26, 2003. This document also seeks comment on reserve prices or minimum opening bids and other auction procedures.

DATES: Comments are due on or before December 9, 2002, and reply comments are due on or before December 16, 2002.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction50@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: *For legal questions:* Chris Shields, Legal Branch at (202) 418–0600. *For general auction questions:* Jeff Crooks, Operations Branch at (202) 418–0660 or Lisa Stover, Operations Branch at (717) 338–2888. Commercial Wireless Division: *For service rule questions:* JoAnn Epps or Melvin Spann, Licensing and Technical Analysis Branch at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 50 Comment Public Notice* released November 26, 2002. The complete text of the *Auction No. 50 Comment Public Notice,* including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 50 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals

II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

1. By the *Auction No. 50 Comment Public Notice*, the Wireless Telecommunications Bureau (''Bureau'') announces the auction of 54 Personal Communications Service (PCS) licenses in the 900 MHz band (''narrowband PCS'') scheduled to commence on March 26, 2003 (''Auction No. 50''). This auction will include six regional licenses and 48 Major Trading Area (MTA) licenses. The spectrum to be auctioned remains unsold from a previous auction, or was previously associated with licenses that have been cancelled or terminated. A complete list of licenses available for Auction No. 50 is included as Attachment A of the *Auction No. 50 Comment Public Notice*. The following table describes the licenses that will be auctioned:

Channel No.	Channel description	Frequency bands	Bandwidth (kHz)
Regional Licenses			
16	One 12.5 kHz/50 kHz paired channel	901.8125–901.8250, 930.65–930.70 MHz	62.5
17	One 12.5 kHz/50 kHz paired channel	901.8150–901.8375, 930.70–930.75 MHz	62.5
Regional Subtotal			125
MTA Licenses			
26	One 50 kHz unpaired channel	901.35–901.4 MHz	50
27	One 50 kHz unpaired channel	901.4–901.45 MHz	50
29	One 50 kHz/50 kHz paired channel	901.95–902.0, 930.8–930.85 MHz	100
30	One 50 kHz/100 kHz paired channel	901.65–901.7, 930.3–930.4 MHz	150
31	One 50 kHz/150 kHz paired channel	901.7–901.75, 930.85–931 MHz	200
32	One 12.5 kHz/100 kHz paired channel	901.8375–901.85, 940.9–941 MHz	112.5
MTA Subtotal			662.5
Grand Total			787.5

Note: For Auction No. 50, licenses are not available for every channel number listed in the table in every market. See Attachment A of he Auction No. 50 Comment Public Notice to determine which licenses will be offered.

2. The Balanced Budget Act of1997 requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *.'' Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction No. 50.

Auction Structure

A. Simultaneous Multiple round (SMR) Auction Design

3. The Bureau proposes to award all licenses included in Auction No. 50 in a simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureau seeks comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

4. The Bureau has been delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 50, the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formula:

$.00001 *kHz* License Area Population with a minimum of $500 per license.

5. Accordingly, the Bureau lists all licenses, including the related license area population and proposed upfront payment for each, in Attachment A of the *Auction No. 50 Comment Public Notice.* The Bureau seeks comment on this proposal.

6. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's ''maximum initial eligibility.'' Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 50 Comment Public Notice,* on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

C. Activity Rules

7. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than wait until the end to participate. A

bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

8. The bureau proposes to divide the action into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance to the next stage (*i.e.,* from Stage One to Stage Two, and form Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it retains the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals. For Auction No. 50, the Bureau proposes the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths (50/49).

9. The Bureau seeks comment on these proposals. Comments that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

10. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be submitted.

11. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding period where a bidder's activity level is below the minimum required unless: (i) There are not activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

Note: If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

12. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the ''reduce eligibility'' function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

13. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open. The Bureau proposes that each bidder in Auction No. 50 be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth. The Bureau seeks comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

14. For Auction No. 50, the Bureau proposes that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within its discretion, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

Bidding Procedures

A. Round Structure

15. The Commission will conduct Auction No. 50 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

16. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

17. The Bureau has discretion to change the bidding schedule in order to

foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

B. Reserve Price or Minimum Opening Bid

18. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

19. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioner often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

20. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 50. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.

21. Specifically, for Auction No. 50, the Commission proposes the following license-by-license formula for calculating minimum opening bids:

$.00001 *kHz* License Area Population with a minimum of $500 per license.

22. The specific minimum opening bid for each license available in Auction No. 50 is set forth in Attachment A of the *Auction No. 50 Comment Public Notice.* Comment is sought on this proposal.

23. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the narrowband PCS spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Acceptable Bids and Bid Increments

24. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The FCC Automated Auction System interface will list the nine acceptable bid amounts for each license.

25. Once there is a standing high bid on a license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.,* the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, *etc.*).

26. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained.

27. For Auction No. 50, the Bureau proposes to calculate minimum acceptable bids by using a smoothing methodology, as it has done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a percentage increment, not to be confused with the bid increment. The percentage increment for each license is based on bidding activity on that license in all prior rounds; therefore, a license which has received many bids throughout the auction will have a higher percentage increment than a license which has received few bids.

28. The calculation of the percentage increment used to determine the minimum acceptable bids for each license for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round. The current activity index is equal to a weighting factor times the number of new bids received on the license in that round plus one minus the weighting factor times the activity index from the prior round. The percentage increment is then calculated as the smaller of (a) a minimum percentage increment multiplied by one plus the activity index and (b) a specified maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license.

Equations

$A_i = (C * B_i) + ((1–C) * A_{i–1})$

I_{i+1} = smaller of $((1 — A_i) * N)$ and M

$X_{i+1} = I_{i+1} * Y_i$

Where,

A_i = activity index for the current round (round i)

C = Activity weight factor

B_i = number of bids in the current round (round i)

$A_{i–1}$ = activity index from previous round (round i–1), A_0) is 0

I_{i+1} = percentage increment for the next rouond (round i+1)

N = minimum percentage increment or percentage increment floor

M = maximum percentage increment or percentage increment ceiling

$X_{i=1}$ = dollar amount associated with the percentage increment

Y_i = high bid from the current round

29. Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over then thousand or to the nearest hundred if it is under then thousand.

Examples

License 1

C=0.5, N = 0.1, M = 0.2

Round 1 (2 New Bids, High Bid = $1,000,000)

i. Calculation of percentage increment for round 2 using the smoothing formula:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$

I_2 = The smaller of ((1 + 1) * 0.1) = 0.2 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 2 (using I_2):

$X_2 = 0.2 * \$1,000,000 = \$200,000$

III. Minimum acceptable bid for round 2 = $1,200,000.

Round 2 (3 New Bids, High Bid = $2,000,000)

i. Calculation of percentage increment for round 3 using the smoothing formula:

$A_2 = (0.5 * 3) + (0.5 * 1) = 2$

I_3 = The smaller of ((1 + 2) * 0.1) = 0.3 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 3 (using I_3):

$X_3 = 0.2 * \$2,000,000 = \$400,000$

iii. Minimum acceptable bid for round 3 = $2,400,000.

Round 3 (1 New Bid, High Bid = $2,400,000)

i. Calculation of percentage increment for round 4 using the smoothing formula:

$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$

I_4 = The smaller of ((1 + 1.5) * 0.1) = 0.25 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 4 (using I_4):

$X_4 = 0.2 * \$2,400,000 = \$480,000$

iii. Minimum acceptable bid for round 4 = $2,880,000.

30. As stated, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times on plus the minimum percentage increment, rounded as described, and the minimum opening bid. That is, I = (minimum opening bid)(1 + N) {rounded} − (minimum opening bid). Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

31. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. the additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

32. The bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau seeks comment on these proposals.

D. High Bids

33. At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each license. In the event of identical high bids on a license in a given round (*i.e.,* tied bids), the Bureau proposes to use a random number generator to select a high bid from among the tied bids. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will again be determined by the highest gross bid amount received for the license.

34. A high bid will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. A high bid from a previous round is sometimes referred to as a ''standing high bid.'' Bidders are reminded that standing high bids confer activity credit.

E. Information Regarding Bid Withdrawal and Bid Removal

35. For Auction No. 50, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

36. A high bidder may withdraw its standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

37. In the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

38. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 50 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

F. Stopping Rule

39. The Bureau has discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' For Auction No. 50, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

40. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

41. However, the Bureau proposes to retain the discretion to exercise any of

the following options during Auction No. 50:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

42. The Bureau proposes to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Bureau seeks comment on these proposals.

Conclusion

43. Comments are due on or before December 9, 2002, and reply comments are due on or before December 16, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction50@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or captain referring to Auction No. 30 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copied of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW, Washington, DC 20554.

44. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

45. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communication Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–30899 Filed 12–3–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, December 10, 2002, at 10 am.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, December 12, 2002, at 10 am.

PLACE: 999 E Street, NW., Washington, DC (Ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and approval of minutes.

Service awards.

Final Audit: Buchanan Foster, Inc.

Final Audit: Gore 2000, Inc. (Primary).

Final Audit: Gore/Lieberman, Inc. and Gore/Lieberman General Election Legal and Accounting Compliance Fund (General).

Final Audit: Keyes 2000.

Final Audit: Bush-Cheney 2000, Inc.

Final Audit: Bush-Cheney 2000 Compliance Committee, Inc.

Interim Rules and Explanation and Justification for BCRA's Millionaires' Amendment.

Final rules and explanation and justification for BCRA reporting.

Notice of proposed rulemaking on Leadership PACs.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–30953 Filed 12–3–02; 3:42 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; An Evaluation of the National Cancer Institute Science Enrichment Program

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National 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: An Evaluation of the NCI Science Enrichment Program (SEP): Follow-up Survey. *Type of Information Collection Request:* Revision (OMB No. 0925–0510, Expiration 2/28/2003). *Need and Use of Information Collection:* This follow-up survey is part of an evaluation designed to assess the effectiveness of the NCI SEP in meeting its goals of: (1) Encouraging under-represented minority and under-served students

who have just completed ninth grade to select careers in science, mathematics, and/or research, and (2) broadening and enriching students' science, research, and sociocultural backgrounds. The program was a 5- to 6-week residential program taking place on two university campuses—University of Kentucky, Lexington, and San Diego State University—in summers 1998–2002. The 5-year evaluation was designed as a controlled, longitudinal study, consisting of the five SEP cohorts and two cohorts of control group students who did not attend the program. The evaluation will provide NCI with valuable information regarding specific components that promoted or limited the program's effectiveness, the extent to which the program was implemented as planned, how much the two regional programs varied, and how the program can be improved or made more effective. NCI will use this information to make decisions regarding continuation and expansion of the program. *Frequency of Response:* One time. *Affected Public:* Individuals or households. *Type of Respondents:* High school and college students. *Cost to Respondents:* $9,600. The annual reporting burden is as follows:

Type of respondents	Average number of respondents/Yr.	Frequency of response	Average time per response	Average annual hour burden
Estimates of Hour Burden: Burden not Previously Approved (1998–2002)				
SEP Participants	200	1	0.5	100
Control Group Students	200	1	0.5	100
Control Group Students	100	[1] 2	1.00	100
Total	500			300
Estimates of Hour Burden: Burden Requested				
SEP Participants	500	[2] 1	0.5	250
Control Group Students	300	[2] 1	0.5	150]
Total	800			400

[1] Pre and post.
[2] Follow up.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Requests for Comments: Written comments and/or suggestions from the public and affected agencies 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.

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 Mr. Frank Jackson, Center to Reduce Cancer Health Disparities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 602, Rockville, MD 20852, or call non-toll-free number (301) 496–8589, or E-mail your request, including your address to: *fj12i@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: November 25, 2002.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–30862 Filed 12–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Tobacco Use Supplement to the Current Population Survey: 2003 Tobacco Use Special Cessation Supplement to CPS

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 15, 2002, page 53357 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 comments. 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: Tobacco Use Supplement to the Current Population Survey: 2003 Tobacco Use Special Cessation Supplement to CPS. *Type of Information Collection Request:* Revision of OMB #0925–0368, Expiration 02/28/2003. *Need and Use of Information Collection:* The 2003 Tobacco Use Special Cessation Supplement to the Current Population Survey conducted by the Census Bureau will collect data from the civilian non-institutionalized population on tobacco use and smoking prevalence, cessation behavior (*i.e.,* quit attempts, successful quitting), use of cessation products and methods, measure level of addiction and plans to quit, workplace smoking policies, health professional advice to stop smoking, and use of different types of cigarettes and potential harm reduction products. This survey will provide invaluable information to government agencies, other scientists and the general public necessary for

tobacco control research, as well as measure progress toward tobacco control as part of the National Cancer Institute's Extraordinary Opportunities in Tobacco Research. This survey is part of a continuing series of surveys that were sponsored by NCI and fielded periodically over the 1990's by the Census Bureau as part of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) project and made available for general public use. The Tobacco Use Supplements will be continuing over the next decade alternating between a standard or core tobacco use survey (such as the 2001–2002 survey) and a special topic survey focusing on emerging tobacco control issues (such as this 2003 Tobacco Use Special Cessation Supplement). The survey will allow state specific estimates to be made. Data will be collected in February 2003, June 2003 and November 2003 from approximately 265,000 respondents. The National Cancer Institute is co-sponsoring this survey with the Centers for Disease Control and Prevention. *Frequency of Response:* One-time study. *Affected Public:* Individual or households. *Type of Respondents:* Persons 15 years of age or older. The annual reporting burden is as follows: *Estimated Number of Respondents:* 88,333; *Estimated Number of Responses per Respondent:* 1; *Averaging Burden Hours Per Response:* 0.1169; and *Estimated Total Annual Burden Hours Requested:* 10,326. The total cost to the respondents is estimated at: $309,800. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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 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: 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 Anne Hartman, Health Statistician, National Cancer Institute, Executive Plaza North, Suite 4005, Bethesda, Maryland 20892–7344, or call non-toll free (301) 496–4970, or FAX your request, to (301) 435–3710, or E-mail your request, including your address, to *ah42@nih.gov* or *Anne Hartman@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: November 26, 2002.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–30861 Filed 12–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, SBIR Meeting.

Date: December 10, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892. 301–451–2020.

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. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30860 Filed 12–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Estrogenic Regulation of Cocaine Sensitization Teleconference.

Date: December 6, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: to review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. (301) 496–5388.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, SPOTRIAS Special Emphasis Panel.

Date: December 16–17, 2002.

Time: 7:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NIDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9549, Bethesda, MD 20892–95429. 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30854 Filed 12–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The purpose of this meeting is to evaluate clinical research projects with yearly direct costs greater than $1 million for their relevance to the mission and the goals of NINDS. The outcome of the evaluation will be a decision whether NINDS should accept the application for scientific review. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Subcommittee of the National Advisory Neurological Disorders and Stroke Council.

Date: December 3, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To evaluate the rationale of large proposed clinical research projects.

Place: 6001 Executive Boulevard, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Dr. Constance W. Atwell, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, 6001 Executive Boulevard, Suite 3309, MSC 9531, Bethesda, MD 20892–9531. 301–496–9248.

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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30855 Filed 12–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of 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 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 Allergy and Infectious Diseases Special Emphasis Panel, Immunostimulatory DNA for Asthma: Principles and Usage.

Date: December 17, 2002.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAID/NIH/DEA/SRP/DHHS, 6700–B Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, AIDS Preclinical Research Review Branch, Scientific Review Program, National Institutes of Allergy and Infectious Diseases, 6700–B Rockledge Drive, Room 3119, Bethesda, MD 20892. (301) 435–1615. kw174b@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30856 Filed 12–04–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of 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 section 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 Allergy and Infectious Diseases Special Emphasis Panel, Vaccinia Proteomics: Smallpox Vaccines and Antivirals.

Date: December 19, 2002.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAID, 6700–B Rockledge, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC–7616, Rockville, MD 20892. 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30857 Filed 12–4–02; 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Smoking Cessation and Health.

Date: December 30, 2002.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892. (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MN and E. coli Meningitis.

Date: December 4, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

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.

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, Listeria Virulence Factors.

Date: December 4, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

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.

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, Trichomas Virulence.

Date: December 5, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

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.

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: November 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30858 Filed 12–4–02; 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 Center for Scientific Review Special Emphasis Panel, November 25, 2002, 12:30 p.m. to November 25, 2002, 2 p.m., which was published in the **Federal Register** on November 15, 2002, 67 FR 69228–69229.

The meeting will be held December 4, 2002, from 3:30 p.m. to 5 p.m. The location remains the same. The meeting is closed to the public.

Dated: November 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30859 Filed 12–04–02; 8:45 am]

BILLING CODE 4140–01–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–037]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: December 19, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* None.
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–986–987 (Final)(Ferrovanadium from China and South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before January 3, 2002.)
5. *Outstanding action jackets:* Nne.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: December 2, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30895 Filed 12–3–02; 10:39 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

In a series of published notices in the **Federal Register** on October 24, 2002 (67 FR 65361), the Department of Justice gave notice that proposed Consent Decrees between the United States and the following companies had been lodged with the United States District Court for the District of Minnesota:

Agri Energy, L.L.C., *et al.*
Al-Corn Clean Fuel Cooperative
American Standard, Inc., *et al.*
Central MN Ethanol Co-op
Chippewa Valley Ethanol Co., L.L.P., *et at.*
Corn Plus

Diversified Energy Co.
Ethanol 2000, L.L.P., *et al.*
Exol, Broin & Associates, Inc., *et al.*
Gopher State Ethanol, Inc.
Heartland Corn Products
Minnesota Energy
Pro-Corn, L.L.C., *et al.*

The October 24, 2002, notice invited the public to submit comments on the proposed Consent Decrees through November 25, 2002, to the Assisted Attorney General for the Environment and Natural Resource Division.

In these actions the United States sought to resolve claims against the owners and operators of ethanol dry mills in Minnesota, pursuant to section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b)(1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991).

By today's notice, the Department of Justice is extending the deadline for submission of public comments on any or all of these proposed Consent Decrees through January 24, 2003. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611, and should reference the company name, and DJ. Ref. 90–5–2–1–07784/1–10.

The Consent Decrees may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of any of the Consent Decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 2004–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, the requester will be required to provide a check in the amount of 25 cents per page reproduction cost payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–30799 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR 50.7, 38 FR 19029, notice is hereby given that on October 29, 2002, a consent decree was lodged with the United States District Court for the District of Massachusetts in *United States* v. *Allied Waste Systems, Inc.,* Civil Action No. 02–CV–12108–REK. A complaint in the action was also filed simultaneously with the lodging of the consent decree. In the complaint the United States, on behalf of the U.S. Environmental Protection Agency (EPA), alleges that the defendant Allied Waste Systems, Inc. (''Allied'') failed to comply with section 601–618 of the Clean Air Act and regulations at 40 CFR part 82, subpart F, in connection with its collection and handling of refuse and recyclables pursuant to a contract with the City of Boston, Massachusetts. The consent decree requires Allied to pay a cash penalty of $782,550, and implement a Supplemental Environmental Project at a cost of $2,300,000. The consent decree also requires Allied to comply with section 601 through 618 of the CAA and subpart F with regard to the handling and disposal of appliances collected pursuant to its contract with the City of Boston. Allied must also provide training to employees who are involved in tasks with respect to the handling of appliances that may contain refrigerant.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Allied Waste Systems, Inc.,* D.J. Ref.# 90–5–2–1–07046.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02110, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $7.75 payable to the ''U.S. Treasury.''

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 02–30796 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, the Department of Justice gives notice that on October 30, 2002, a proposed consent decree in *United States* v. *DeMert & Dougherty, Inc.*, No. 2:02CV434 (N.D. Ind.), was lodged with the United States District Court for the Northern District of Indiana.

The United States' complaint seeks the recovery, pursuant to CERCLA section 107, 42 U.S.C. 9607, of unreimbursed costs that have been incurred by the United States at the American Chemical Service, Inc. Superfund Site in Griffith, Lake County, Indiana (''ACS Site''), as well as the implementation, pursuant to CERCLA section 106, 42 U.S.C. 9606, of the United States Environmental Protection Agency's selected remedy for the ACS site.

On January 11, 1996, DeMert & Dougherty, Inc. filed for bankruptcy under chapter 11 of the Bankruptcy Code in the U.S. District Court for the Northern District of Illinois. (*In re: DeMert & Dougherty, Inc.* (Bankr. N.D. Ill. (Eastern Div. No. 96 B 0851)).) The case was converted to a chapter 7 bankruptcy on June 27, 1996. In that case, the United States filed a proof of claim pertaining to the costs that it incurred at the ACS site.

Under the proposed consent decree, the United States would receive an allowed general unsecured claim of $2,225,000 in the chapter 7 bankruptcy, which would resolve both the United States' proof of claim and DeMert & Dougherty, Inc.'s liability at the ACS site. Any portion of the $2,225,000 that is received by the United States will be deposited in an ACS special account within the Superfund.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *DeMert & Dougherty, Inc.*, No. 2:02CV434 (N.D. Ind.), D.J. Ref. 90–11–3–1094/5.

The consent decree may be examined at the Office of the United States Attorney, Northern District of Indiana,

5400 Federal Plaza, Suite 1500, Hammond, Indiana 44320 (contact Assistant United States Attorney Carol A. Davilo, 219–937–5500), and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois (contact Assistant Regional Counsel Michael McClary (312–886–7163). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. Requests for a copy of the proposed consent decree also may be faxed to Ms. Tonia Fleetwood, fax no. 202–616–6584, telephone confirmation number 202–514–1547. In requesting a copy, please refer to *United States* v. *DeMert & Dougherty, Inc.* No. 2:02CV434 (N.D. Ind.), and DOJ Reference Number 90–11–3–1094/4, and enclose a check in the amount of $5.25 (21 pages at 25 cents per page reproduction costs), made payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–30797 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Galax, Virginia*, Civil Action No. 7:01CV00925, was lodged with the United States District Court for the Western District of Virginia on November 14, 2002.

The consent decree resolves claims pursuant to section 309(e) of the Clean Water Act, 33 U.S.C. 1319(e), for past violations of permit limits for nitrate plus nitrite and total suspended solids, and for failures to monitor stream flow rates. The decree obligates Defendant Galax to pay a civil penalty of $50,000; expend $50,000 over two years to implement supplemental environmental projects consisting of the construction of livestock watering systems, fencing, and other measures to limit agricultural runoff into Chestnut Creek upstream of Galax, Virginia; and operate its sewage pumping stations in a manner designed to eliminate sanitary sewer overflows.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. Each communication should refer on its face to *United States* v. *City of Galax, Virginia*, DOJ #90–5–1–1–07198.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Virginia, 105 Franklin Road, SW., Roanoke, VA 24011–2305; and the Region VIII Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103–2029. A copy of the proposed consent decree may be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax number (202) 616–6584; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $14.50 (25 cents per page reproduction cost) payable to the U.S. Treasury, referencing the DOJ Consent Decree Library, *United States* v. *City of Galax, Virginia*, DOJ #90–5–1–1–07198, to the first-class mail address listed above.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–30798 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association (''DVD CCA'')

Notice is hereby given that, on October 8, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DDV CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A&R Cambridge Limited, Cambridge, England, United Kingdom; Axiom Technologies Mfg Pte Ltd., Singapore, Singapore; BBK Electronics Corp., Ltd., Dongguan, Guangdong, People's Republic of China; Compal Electronics, Inc., Neihu, Taipei, Taiwan; Dongguan Albatronics (Far East) Electronics Co., Ltd., Dongguan, Gaungdong, People's Republic of China; Denon, Ltd., Kawasaki-ku, Kawasaki-shi, Kanagawa, Japan; Duplico 2000, S.L., Barcelona, Spain; Hyundai Digital Technology Co., Ltd., Seongnam-Si, Kyoungki-do, Republic of Korea; Kaleidoscape, Inc., Los Altos, CA; L&M Optical Disc West, LLC, Valencia, CA; Marantz Japan, Inc., Sagamihara-shi, Kanagawa, Japan, Media Factory Inc., Fremont, CA; MicroPious Co., Ltd., Pyeong Taek City, GyeongGi-Do, Republic of Korea; NewSoft Technology Corporation, NanKang, Taipei, Taiwan; Optimal Media Production GmbH, Muritz, Germany; Ritek Corporation, Hsin-Chu Industrial Park, Taiwan; Roxio, Inc., Santa Clara, CA; Shanghai HongSheng (Norcent) Technology Co., Ltd., Pudong, Shanghai, People's Republic of China; Shenzhen Landel Electronics Technology Co., Ltd., Saige Zone, Shenzhen, People's Republic of China; SM Summit Holdings Limited, Singapore, Singapore; Societe Nouvelle Arceacem (S.N.A.), Tourouvre, France; Ya Bang Industrial Co. Ltd., DongGuan City, Guangdong, People's Republic of China; and Yuxing Electronics Company Limited, Xicheng District, Beijing, People's Republic of China have been added as parties to this venture.

Also, Alcorn McBride Inc., Orlando, FL; Applied Research Corporation, Taipei Hsien, Taiwan; Concord Disc Manufacturing Corp., Anaheim, CA; Jeong Moon Information Co., Ltd., Kyeongki-Do, Republic of Korea; MARGI Systems, Inc., Fremont, CA; MGI Software Corp., Toronto, Ontario, Canada; Nakamichi Corporation, Tokyo, Japan; OPT Corporation, Naganoken, Japan; Planet Optical Disk Limited FZE, Dubai, United Arab Emirates; Shenzhen Paragon Industries (formerly Shenzhen Sangda Baodian Co., Ltd.), Shenzhen Guangdong, People's Republic of China; Shunde Xiongfeng Electric Industrial Company, Shunde City, Guangdong, People's Republic of China; and Tanway Electronic Factory, Guangzhou, People's Republic of China have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD Copy Control Association (''DDV CCA'') intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD Copy Control Association (''DDV CCA'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on July 10, 2002. A

notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2002 (67 FR 56587).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–30792 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on October 29, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aeroflex Corp., Powell, OH has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notification disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on August 2, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2002 (67 FR 56588).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–30793 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Management Service Providers Association, Inc.

Notice is hereby given that, on October 23, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Management Service Providers Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bangalore Labs, Bangalore, Karnataka, India; Logical Managed Services, Cincinnati, OH; Global Data Systems, Inc., Pembroke, MA; and Rave Financial Services, Sterling Heights, MI have been added as parties to this venture. Also, Triactive, Austin, TX and MacAfee, Sunnyvale, CA have been dropped as parties to this venture; and S Net, Seoul, Republic of Korea has changed its name to S Com Networkis.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Management Service Providers Association, Inc. intends to file additional written notification disclosing all changes in membership.

On October 20, 2000, Management Service Providers Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 24, 2000 (65 FR 70613).

The last notification was filed with the Department on July 31, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 12, 2002 (67 FR 57853).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–30794 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Multi-Terabyte Tape Storage

Notice is hereby given that, on October 29, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Multi-Terabyte Tape Storage has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Accutronics Inc., Littleton, CO; Advanced Research Corporation, Minneapolis, MN; Imation Corp., Oakdale, MN; Peregrine Recording Technology Inc., Woodbury, MN; and Read-Rite Corporation, Fremont, CA. The nature and objectives of the venture are to develop the technologies to increase the data density of existing magnetic tape data systems by a factor of 250 and lay the foundation for even greater densities in future systems, leading to cost reductions in data archiving and improving the competitive position of the U.S. data storage industry.

Constance K. Robinson,

Director of Operation, Antitrust Division.

[FR Doc. 02–30790 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Optical Internetworking Forum

Notice is hereby given that, on July 22, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Optical Internetworking Forum has filed written notifications simultaneously with the Attorney General and Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the

recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Samsung, Seoul, Republic of Korea; Tsunami Photonics, Dun Laoghaire, Ireland; MergeOptics Gmbh, Berlin, Germany; ASTRI, Kowloon, Hong Kong-China; and Transpera Networks, San Jose, CA, have been added as parties to this venture.

Also, Acorn Networks, Reston, VA; Aerie Networks, Denver, CO, Alidian Networks, San Jose, CA; Alphion, Eatontown, NJ; Appian Communications, Boxborough, MA; Applied Optoelectronics, Sugarland, TX; Atoga Systems, Fremont, CA; Bitmath, Fremont, CA; BrightLink Networks, Sunnyvale, CA; Cenix, Allentown, PA; Cielo Communications, Broomfield, CO; Cinta Networks, Beaverton, OR; CIVCOM, Petach-Tikva, Israel; Corona Optical Systems, Corning, NY; Cplane, Sunnyvale, CA; Crescent Networks, Lowell, MA; CyOptics, Los Angeles, CA; Efficient Channel Coding, Brooklyn Heights, OH; Entridia, Irvine, CA; FirstWave Intelligent Optical Networks, San Jose, CA; Gazillion Bits, Los Altos, CA; GDA Technologies, San Jose, CA; Gemfire, Palo Alto, CA; Genoa, Fremont, CA; Greenfield Networks, Santa Clara, CA; Gtran, Westlake Village, CA; GWS Photonics, Philadelphia, PA; Helic S.A., Alimos, Greece; Kerenix, P.Tikva, Israel; Kestrel Solutions, Mountain View, CA; Kodeos Communications, South Plainfield, NJ; Lambda Crossing, Caesarea, Israel; Laurel Networks, Pittsburgh, PA; Lightbit Corporation, Mountain View, CA; Maple Optical Systems, San Jose, CA; Memlink, Herzelia B, Isreal; MindTree Counsulting Pvt. Ltd, Banashankari, India; Network Photonics, Calgary, Alberta, Canada; Opthos, San Carlos, CA; Optivera, Tel Aviv, Israel; Peregrine Semiconductor, San Diego, CA; Photonami, Inc., Toronto, Ontario, Canada; PicoLight, Boulder CO; Power X Networks, Sale, United Kingdom; Radiant Photonics, Inc., Austin, TX; Redfern Broadband Networks, Sydney, New South Wales, Australia; Silicon Bridge, Fremont, CA; SiPackets, Inc., Fremont, CA; Sparkolor, Santa Clara, CA; Syntera Communications, Fremont, CA; TelOptica, Richardson, TX; TeraBeam Networks, Seattle, WA; Terago Communications, Maple Grove, MN; Transparent Networks, Santa Clara, CA; Trellis Photonics, Yokneam Elite Israel; TriCN Associates, LLC, San Francisco, CA; Valiant Networks, San Jose, CA; Village Networks, Eatontown, NJ; VIPswitch, Brossard, Quebec, Canada; Vivace Networks, San Jose, CA; Yotta Networks, Plano, TX; C Speed Corp., Santa Clara, CA; CIR, Charlottesville, VA; Emperative, Boulder, CO; Geyser Networks, Sunnyvale, CA; Hyperchip, Montreal, Quebec, Canada; Intelliden, Colorado Springs, CO; Jedai Broadband Networks, Red Bank, NJ; Optical Switch, Richardson, TX; Perihelion Associates, Mercerville, NJ; TSRI, Deerfield, IL; White Rock Networks, Dallas, TX; Applied Innovation, Dublin, OH; BellSouth Telecommunications, Atlanta, GA; BT, Ipswich, Suffolk, United Kingdom; Corning Incorporated, Corning, NY; FCI, Dorval, Quebec, Canada; Foundry Networks, San Jose, CA; GlobespanVirata, Cambridge, Cambridgeshire, United Kingdom; Honeywell, Cupertino, CA; Network Associates, Santa Clara, CA; OKI Electric Industry, Tokyo, Japan; Raza Foundries, San Jose, CA; Redback Networks, Vancouver, British Columbia, Canada, Riverstone Networks, Santa Clara, CA; Sorrento Networks, San Diego, CA; Transwitch Corporation, Bedford, MA; TyCom, Eatontown, NJ; WorldCom, Richardson, TX; Nokia, Santa Rosa, CA; Sprint, Westwood, KS; Acelo Semiconductor, Oxnard, CA; API Networks, Inc., Concord, MA; Dynamost, Murray Hill, NJ; Inara Networks, San Jose, CA; Japan Radio Co., Hikakrino-oka, Japan; KAIST, Yusong-gu, Republic of Korea; KPNQwest, Hoeilaart, Belgium; Marvell Technology, Sunnyvale, CA; Matsushita Communication Industrial, Kanagawa, Japan; Norlight Telecommunications, Brookfield, WI; Sonera Carrier Networks Ltd., Oulu, Finland; Tiburon Networks, Andover, MA; VTT Information Technology, Oulu, Finland; Zaiq Technologies, Woburn, MA; Arcor AG & Co., Eschborn, Germany; Fhg—IMK, Sankt Augustin, Germany; Hughes Software Systems Ltd., Haryana, India; and Nakra Labs, North Andover, MA have been dropped as parties to this venture.

The following members have changed their names: CCL to Industrial Technology Research Institute, Hsin Chu, Taiwan; Tality to Cadence Design Systems, Cary, NC; Flextronics Semiconductor to Flextronics, Hillsboro, OR; TILAB S.p.A to Telecom Italia Lab, Torino, Italy; Octillion Communication to Lattice Semiconductor, San Jose, CA; and QOptics to ELEMATICS, Beaverton, OR.

The following members have been involved with mergers: Paracer, Santa Clara, CA has merged into Stratos LightWave, Mountlake Terrace, WA; ONI Systems, San Jose, CA has merged into Ciena, Linthicum, MD; Dorsal Networks, Columbia, MD has merged into Corvis, Columbia, MD; and Octillion Communication, San Jose, CA has merged into Lattice Semiconductor, San Jose, CA.

No other charges have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Optical Internetworking Forum intends to file additional written notification disclosing all changes in membership.

On October 5, 1998, Optical Internetworking Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 29, 1999 (64 FR 4709).

The last notification was filed with the Department on July 22, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2002 (67 FR 56590).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–30791 Filed 12–04–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Surface Logix, Inc.

Notice is hereby given that, on October 30, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Surface Logix, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Surface Logix, Inc., Brighton, MA; and Ancora Pharmaceuticals, Inc., Cambridge, MA. The nature and objectives of the venture are to execute a 3-year project to facilitate carbohydrate-based drug discovery and research by developing and integrating a variety of new technologies tailored to carbohydrate production and detection of their interactions. These technologies include automated synthesis methods to rapidly produce complex carbohydrates (Ancora), a unique surface chemistry platform with which to present these molecules, and a surface-based

detection system (Surface Logix). These tools will be used to design quantitative, reproductible assays containing many of the carbohydrate variants found in specific biological interactions. These assays will be configured to measure key interactions between carbohydrates and other biomolecules, thus enabling carbohydrate-based drug discovery.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–30795 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–11–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Survivor Death Benefits: OMB 3220–0031.

Under section 6 of the Railroad Retirement Act (RRA), lump-sum death benefits are payable to surviving widow and widowers, children and certain other dependents. Lump-sum death benefits are payable after the death of a railroad employee only if there are no qualified survivors of the employee immediately eligible for annuities. With the exception of the residual death benefit, eligibility for survivor benefits depend on whether the employee was ''insured'' under the RRA at the time of death. If a deceased employee was not so insured, jurisdiction of any survivor benefits payable is transferred to the Social Security Administration and survivor benefits are paid by that agency instead of the RRB. The collection obtains the information required by the RRB to determine entitlement to and amount of the survivor death benefits applied for.

The RRB currently utilizes form(s) AA–11a (Designation for Change of Beneficiary for Residual Lump-Sum), AA–21cert, (Application Summary and Certification), AA–21 (Application for Lump-Sum Death Payment and Annuities Unpaid at Death), G–131 (Authorization of Payment and Release of All Claims to a Death Benefit or Accrued Annuity Payment), and G–273a (Funeral Director's Statement of Burial Charges), to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (min)	Burden (hrs)
AA–11a	400	10	67
AA–21cert (with assistance)	9,700	20	3,233
AA–21 manual (without assistance)	300	40	200
G–131	600	5	50
G–273a	9,600	10	1,600
Total	20,600		5,150

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–30787 Filed 12–4–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: System Access Application, Form BA–12, 3220–NEW.

Under section 9 of the Railroad Retirement Act (RRA) employers are required to submit reports of employee service and compensation to the Railroad Retirement Board (RRB) as needed for administering the RRA. Under section 6 of the Railroad Unemployment Insurance Act (RUIA), employers are required to submit returns of compensation of employees. The reporting requirements are specified in 20 CFR part 209 and 20 CFR 345.110.

The Government Paperwork Elimination Act (GPEA) requires Federal agencies to provide its customers the option to submit or to transact business with agencies electronically, when practical, as a substitute for paper by October 21, 2003. The RRB will propose to allow employers to submit employee reports of service and compensation routinely via the Internet during 2003.

In order to establish proper control of this process, the RRB must obtain information from employers that will identify employees who will be allowed to use the Internet to submit reporting forms to the RRB and also to determine

what degree of access (view only, data entry/modification or approval/submission) is appropriate for that employee.

The RRB proposes to use new form BA–12, System Access Application, to secure the necessary information. Initially, form BA–12 will be sent to all covered employers for completion. After the initial round of responses are received, form BA–12 will be used to add/delete employee(s) access to the system, or to update previously supplied information.

Within three days of receipt of an acceptable application, the RRB will mail a logon identification and a password to the employee that will provide access to the RRB's Employer Reporting System.

This is a new information collection. Completion is voluntary and one response will be requested for each employee request for access or any subsequent access modification. The RRB estimates the annual respondent burden as follows:

Estimated number of responses: 900.

Estimated completion time per response: 10–20 minutes.

Estimated annual burden hours: 292.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–30788 Filed 12–4–02; 8:45 am]

BILLING CODE 7905–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459, Amdt. # 4]

State of Texas

In accordance with a notice received from the Federal Emergency Management Agency, dated November 20, 2002, the above numbered declaration is hereby amended to include Brazoria, Cameron, Fort Bend, Hidalgo, Jasper, Kleburg, and San Jacinto Counties in the State of Texas as a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing through November 15, 2002.

In addition, applications for economic injury loans from small businesses located in Angelina, Austin, Jim Hogg, Kenedy, Matagorda, Sabine, San Augustine, Starr, Trinity, Wharton and Willacy Counties in the State of Texas may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 6, 2003, and for economic injury the deadline is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 27, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–30815 Filed 12–4–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver of Aeronautical Land-Use Assurance Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is giving notice that portions of the airport property located in the north-northwest corner of the airport are not needed for aeronautical use as currently identified on the Airport Layout Plan. The Metropolitan Airports Commission (MAC) proposes the release and acquisition of land parcels in order to acquire land necessary to construct a deicing facility on land currently occupied by the U.S. Navy Reserve. To obtain the property from the U.S. Navy, the MAC is required by Congress to provide a functional replacement facility to the satisfaction of the Secretary of the Navy.

The requirement is contained in Public Law 105–261, Section 2854, which was approved by the U.S. Congress in 1998. The MAC will release and subsequently acquire land from two entities, the Minneapolis Park and Recreation Board (MPRB) and the U.S. Navy Reserve. The MAC committed in the Dual Track Airport Planning Process, Final Environmental Impact Statement/Record of Decision to construct a dedicated deicing pad at the end of Runway 12R. The proposed deicing facility would be located on existing U.S. Navy Reserve property (27.49 acres). To acquire this property, the MAC is proposing the following:

1. Release of fee title of 10 acres of airport land to the MPRB, along with a 15 year lease on an additional 30 acres adjacent to this parcel.

2. Acquisition of fee title by the MAC of an 8-acre parcel of MPRB owned land in an adjacent to the Navy Relocation Site.

3. Release of fee title of 11.8 acres of airport land, including portions of the former MPRB parcel, to the U.S. Navy Reserve.

4. Acquisition of fee title by the MAC of 27.49 acres of land from the U.S. Navy Reserve to allow for the construction of a deicing pad.

The airport land was acquired through FAA Grants, FAAP–9–21–046–507 in 1955, and FAAP–9–21–046–0215 in 1962. The parcel being released to the U.S. Navy has been vacant for several years. The parcel being released to the MPRB is presently wooded and undeveloped. These parcels are not needed for aeronautical use, as shown on the Airport Layout Plan.

The property transactions will facilitate a key part of the MSP 2010 Airport Expansion Program, to build a system of end-of-runway remote deicing pads. It will bring MSP in compliance with FAA Advisory Circulars, fulfill environmental permit requirements as found in the MSP NPDES discharge permit, enhance capacity of MSP during severe weather conditions, and improve the safety of the flying public.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Glen Orcutt, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4354/FAX Number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this same location or at the Minneapolis-St. Paul International Airport, Minneapolis, MN.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the disposal of the subject airport property at Minneapolis-St. Paul International Airport, Minneapolis, MN.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for Airport Improvement Program funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Minneapolis, MN, on October 23, 2002.

Nancy M. Nistler,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 02–30848 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–64]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 26, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on November 30, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13094.
Petitioner: Air North, Inc.
Section of 14 CFR Affected: 14 CFR § 129.28.
Description of Relief Sought: To permit Air North to operate its Hawker Siddeley combination aircraft, until April 9, 2003, without equipping each aircraft with a door, operable from the flightdeck only, that restricts unwanted entry of persons to the flightdeck.

Docket No.: FAA–2002–13347.
Petitioner: Executive Jet Management, Inc.
Section of 14 CFR Affected: 14 CFR 135.145(a).
Description of Relief Sought: To allow Executive Jet Management to replace actual proving flights for each of its turbojet-powered airplanes with an enhanced proving test process that incorporates the use of tabletop simulation.

[FR Doc. 02–30845 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent to Rule on Application 03–03–C–00–SBN to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at South Bend Regional Airport, South Bend, Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at South Bend Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 6, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 312, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John C. Schalliol, Executive Director, South Bend Regional Airport at the following address: South Bend Regional Airport, 4477 Progress Drive, South Bend, Indiana 46628.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the South Bend Regional Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory N. Sweeny, Program Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 312, Des Plaines, Illinois 60018, (847) 294–7526. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at South Bend Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 12, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the St. Joseph County Airport authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 25, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: January 1, 2023.

Total estimated PFC revenue: $23,898,229.

Brief description of proposed projects: Land acquisition (for the relocation of Lincolnway West, extension of runway 18/36 and airport development); Lincolnway West Relocation. Class or classes of air carriers which the public

agency has requested not be required to collect PFCs: part 135 air taxi operators operating with less than 15 seats.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the South Bend Regional Airport.

Issued in Des Planes, Illinois on November 21, 2002.

Mark McClardy,

Manager, Planning and Programming Branch, Airport Division, Great Lakes Region.

[FR Doc. 02–30846 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–01–C–00–TVF To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Thief River Falls Regional Airport, Thief River Falls, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Thief River Falls Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 6, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Roger DeLap, City Administrator of the City of Thief River Falls, MN at the following address: Thief River Falls City Hall, 405 Third Street East, P.O. Box 528, Thief River Falls, Minnesota 56701.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Thief River Falls under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, telephone (612) 713–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Thief River Falls Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158). On November 12, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Thief River Falls, Minnesota was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 28, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1 2003.

Proposed charge expiration date: June 1, 2023.

Total estimated PFC revenue: $636,828

Brief description of proposed projects: Rehabilitate runway 13/31; install airport signs and miscellaneous taxiway lights; overlay parallel taxiway (for runway 13/31), general aviation taxiway, and air transport apron; acquire aircraft rescue and firefighting vehicle (ARFF); reconstruct commercial aircraft parking apron; construct crosswind runway 3/21 including land acquisition, installation of medium intensity runway edge lights (MIRL), runway end identification lights (REIL), and precision approach path indicator system (PAPI); construct parallel and connecting taxiways (for runway 3/21); prepare passenger facility charge application (PFC); rehabilitate portions of the air carrier parking apron; install deer fence; and rehabilitate non-revenue automobile parking lot.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-Scheduled/On Demand Air Carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Thief River Falls City Hall.

Issued in Des Plaines, Illinois on November 21, 2002.

Mark McClardy,

Manager, Airports Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 02–30847 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–08–C–00–CRW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yeager Airport, Charleston, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 6, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Beckley Airports Field Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Atkinson, Director of Aviation of the Central West Virginia Regional Airport Authority at the following address: 100 Airport Road, Suite 175, Charleston, West Virginia 25311–1080.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Central West Virginia Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Larry F. Clark, Manager, Airports Field Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813, (304) 252–6216. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the

Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 13, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Central West Virginia Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 6, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–08–C–00–CRW.

Level of the proposed PFC: $4.50

Proposed charge effective date: April 1, 2003

Proposed charge expiration date: February 1, 2006

Total estimated PFC revenue: $3,134,120

Brief description of proposed projects(s):

—Runway 5/23 Engineering Study
—Obstructional Removal
—Taxiway B Drain Repair
—Strengthen Taxiway B, B1 and General Aviation Apron
—Acquire Snow Equipment (Radio/Friction Meter)
—Acquire Snow Removal Equipment (Enloader)
—Acquire Security Vehicle
—Rehabilitate Airport Lighting (Runway 5/23, Runway 15/33; Taxiways A, B & C)
—Rehabilitate Runway 5/23
—Acquire Snow Removal Equipment (Grader)
—Construct Snow Equipment Storage Building
—Acquire Airline Baggage Lift System
—Install Security Paging System
—Conduct Wildlife Study
—Runway 5 Safety Area Improvement
—Install Apron Signs
—Rehabilitate Runway 15/33
—Replace Lighting Regulators
—Repair Runway 5/23
—Upgrade Runway Scan System

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

—Under FAR part 135—Charter Operators for hire to the general public
—Under FAR part 121—Charter Operators for hire to the general public
—Non-signatory and non-scheduled Air Carriers

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: 1 Aviation Plaza, Airports Division, AEA–610, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central West Virginia Regional Airport Authority.

Issued in Beckley, West Virginia on November 14, 2002.

Larry F. Clark,

Manager, Beckley AFO, Eastern Region.

[FR Doc. 02–30850 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 214X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Buchanan County, VA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 6.4-mile line of railroad between milepost DC–16.6 at Wyatt and milepost DC–23.0 at Jewell Valley, in Buchanan County, VA.[1] The line traverses United States Postal Service zip codes 24066 and 24622.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past 2 years and any overhead traffic could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 4, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 16, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 26, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 10, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify

[1] NSR states that authority for discontinuance of operations between milepost DC–17.2 and milepost DC–23.0 was granted in *Norfolk and Western Railway Company—Discontinuance Exemption—in Buchanan County, VA,* Docket No. AB–290 (Sub-No. 100X) (ICC served July 16, 1990).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 5, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: November 26, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30593 Filed 12–4–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Application for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use.

OMB Number: 1515–0032.

Form Number: Customs Form 5125.

Abstract: The Customs Form 5125 is used for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels. The form also certifies the use: total consumption or partial consumption with secure storage for use on next voyage.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 42.

Estimated Total Annualized Cost on the Public: $504.00.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30807 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Blanket Certification of Chemical Substances

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Blanket Certification of Chemical Substances. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Blanket Certification of Chemical Substances.

OMB Number: 1515–0173.

Form Number: N/A.

Abstract: The Customs Regulations require an importer's certification in connection with the importation of chemical substances subject to the Toxic Substances Control Act. This collection

reduces the regulatory burden by permitting use of a blanket certification for multiple shipments in lieu of a separate certification for each individual.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 75.

Estimated Total Annualized Cost on the Public: $2,200.00.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30809 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Transfer of Cargo to a Container Station

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Transfer of Cargo to a Container Station. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Transfer of Cargo to a Container Station.

OMB Number: 1515–0142.

Form Number: N/A.

Abstract: The container station operator may file an application for transfer of a container intact to a container station which is mover from the place of unlading or from a bonded carrier after transportation in-bond before filing of the entry for the purpose of breaking bulk and redelivery.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 360.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1,872.

Estimated Total Annualized Cost on the Public: $18,720.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30810 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration of a Person Abroad Who Receives and Is Returning Merchandise to the U.S.

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of

Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S.

OMB Number: 1515–0108.

Form Number: N/A.

Abstract: This declaration is used under conditions where articles are imported and then exported and then reimported free of duty due to the declaration, it is used insured Customs control over duty free merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Individuals, business or other for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 292.

Estimated Total Annualized Cost on the Public: $5,942.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30811 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration of Owner of Merchandise Obtained (Other Than) in Pursuance of a Purchase or Agreement To Purchase and Declaration of Importer of Record When Entry Is Made by an Agent

AGENCY: Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of Owner of Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by an Agent. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of Owner of Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by an Agent.

OMB Number: 1515–0050.

Form Number: Customs Forms 3347 and 3347A.

Abstract: Customs Form 3347 and 3347A allows an agent to submit, subsequent to making the entry, the declaration of the importer of record which is required by statute. These forms also permits a nominal importer of record to file the declaration of the actual owner and to be relieved of statutory liability for the payment of increased duties.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 5,700.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 570.

Estimated Total Annualized Cost on the Public: $14,900.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30812 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; North American Free Trade Agreement (NAFTA) Regulations and Certificate of Origin

AGENCY: Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the NAFTA Regulations and Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on

proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: NAFTA Regulations and Certificate of Origin.

OMB Number: 1515–0204.

Form Number: Customs Form 434 and 446.

Abstract: The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada; facilitate conditions of fair competition within the free trade area; liberalize significantly conditions for investments within the free trade area; establish effective procedures for the joint administration of the NAFTA ; and the resolution of disputes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 5000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 25,760.

Estimated Total Annualized Cost on the Public: $600,000.00.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30813 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Textile and Textile Products

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Textile and Textile Products. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Textile and Textile Products.

OMB Number: 1515–0140.

Form Number: N/A.

Abstract: Information is needed for Customs to be able to identify the Country of Origin of Textiles. The requirement prevents circumvention of bilateral agreements and ensures the proper assessment of duties. The declaration will be executed by the foreign manufacturer, exporter, or U.S. importer to be filed with the entry.

Current Actions: There are no changes to the information collection.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 45,810.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 133,582.

Estimated Total Annualized Cost on the Public: $51,469,402.00.

Dated:November 26, 2002.

Tracey Denning,

Agency Clearance Officer, , Information Services Branch.

[FR Doc. 02–30814 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room

3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission.

OMB Number: 1515–0222.

Form Number: N/A.

Abstract: This collection is required to ensure compliance with section 337 of the Tariff Act of 1930, as amended by section 321 of the Uruguay Round Agreements regarding bond procedures for entry of articles subject to exclusion orders issued by the U.S. International Trade Commission.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annualized Cost on the Public: $625.00.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30808 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 67, No. 235

Thursday, December 5, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13820; Airspace Docket No. 02–AGL–11]

Modification of Class E Airspace; Flint, MI

Correction

In rule document 02–29900 beginning on page 70534 in the issue of Monday, November 25, 2002, make the following corrections:

1. On page 70534, in the second column, under the heading **EFFECTIVE DATE**, in the first and second lines, ''January 23, 2002'' should read, ''January 23, 2003''.

§71.1 [Corrected]

2. On the same page, in the third column, in § 71.1, in the last paragraph, in the third line, ''Ayirport'' should read, ''Airport''.

[FR Doc. C2–29900 Filed 12–4–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
December 5, 2002

Part II

National Credit Union Administration

12 CFR Part 701
Organization and Operations of Federal Credit Unions; Proposed Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board is proposing amendments to its chartering and field of membership manual to update chartering policies and streamline documentation. These proposed amendments are in response to NCUA's almost four years of experience with existing chartering and field of membership policies.

DATES: Comments must be postmarked or received by February 3, 2003.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or e-mail comments to *regcomments@ncua.gov* instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314, or telephone (703) 518–6540; Lynn K. Markgraf, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314, or telephone (703) 518–6396.

SUPPLEMENTARY INFORMATION:

Background

NCUA's chartering and field of membership policy is set out in Interpretive Ruling and Policy Statement 99–1, Chartering and Field of Membership Policy (IRPS 99–1), as amended by IRPS 00–1 and IRPS 02–2. The policy is incorporated by reference in NCUA's regulations at 12 CFR 701.1. It is also published as NCUA's Chartering and Field of Membership Manual (Chartering Manual), which is the document most interested parties use and to which references in the following discussion are made.

In 1998, Congress updated the laws on field of membership with the passage of the Credit Union Membership Access Act (''CUMAA''). On December 17, 1998, in response to CUMAA, the NCUA Board issued a final rule on chartering and field of membership. 63 FR 73022, Dec. 30, 1998. When the NCUA Board issued its final rule it instructed the Field of Membership Taskforce to coordinate and monitor implementation of the new chartering policies and make necessary recommendations for policy clarifications and amendments to IRPS 99–1. Accordingly, recommendations were made, and final amendments to NCUA's chartering policy were issued by the NCUA Board in 2000 and again in 2002. 65 FR 64512, Oct. 27, 2000, and 67 FR 20013, Apr. 24, 2002.

Over the past four years, NCUA's Field of Membership Taskforce has continued to monitor and review the implementation of IRPS 99–1 and its amendments in an effort to improve consistency and provide a basis, if necessary, for further clarifications and modifications. In response to this continued oversight, the Field of Membership Taskforce provided a report to the Board this year. The findings and recommendations contained in that report and which are the basis for these amendments, are in response to issues that either arose during the past four years or were identified by the NCUA Board as issues that needed clarification.

A. Proposed Amendments

1. Overlaps

The NCUA Board believes overlaps should generally be permitted and believes it is now appropriate to eliminate overlap protection to the maximum extent feasible. The Board has found no empirical evidence to indicate that overlaps have an adverse impact on credit unions. In fact, past reports to the NCUA Board, and staff experience, indicate that overlaps do not harm credit unions. Overlap protection generally harms the credit union member. Overlaps will allow members to have more choice in credit union financial services and allows members to obtain the service that best meet their individual needs. Therefore, except for select group expansions for multiple group credit unions, the Board proposes to eliminate overlap protection and provide the option to all credit unions to remove any existing exclusionary clauses in its charter.

Under the Federal Credit Union Act (the ''Act''), the agency must do an overlap analysis on select group expansions for multiple group credit unions so no significant change can be made in this area. On select group expansions, however, the NCUA Board believes that overlaps of groups of less than 3000 should be classified as an incidental overlap and no overlap analysis should be required.

The NCUA Board believes that if two credit unions want to retain an exclusionary clause that is a business decision for them to make. If, however, one credit union wants the exclusionary clause removed, then it should be approved since, as stated above, the NCUA Board believes there will be no harm to the overlapped credit union. The NCUA Board also believes that the removal of such an exclusionary clause should be treated as a housekeeping amendment.

Therefore, the NCUA Board is proposing to amend Chapter 1, Section IV.D, Chapter 2, Sections II.A. II.B.,II.E, II.G, III.B, III.E, III.G., IV.B, IV.E. and V.E. to accomplish this change in policy.

2. Reasonable Proximity and Service Facility for Select Group Expansions

In addressing the issue of reasonable proximity and service facility, the question was raised whether NCUA's view of this issue was unduly restrictive. This issue is particularly important in view of the continued advancement in electronic delivery systems and alternative methods of providing credit union service. To restate current policy, the NCUA Board does not have any mileage limitations for adding select groups and defines reasonable proximity on a case-by-case basis as was previously discussed in the preamble to IRPS 99–1. 63 FR 71988, 72002–72003, Dec. 30, 1998. The NCUA Board, however, has reconsidered the definition of a service facility for the purpose of the reasonable proximity analysis.

Under CUMAA, if the formation of a separate credit union is not practicable or consistent with the standards set forth in the statute, then a select group can be included in the ''field of membership of a credit union that is within reasonable proximity to the location of the group.'' 12 U.S.C. 1759 (f)(1)(B). The statute then delineates a number of approval criteria that must be satisfied before a select group can be added. The statute does not define a service facility for the purpose of analyzing reasonable proximity.

In defining reasonable proximity, the Board has continually stated that the group to be added must be within the ''service area'' of a ''service facility'' of the credit union. After reviewing CUMAA and its legislative history again, the NCUA Board has concluded that its current definition of service facility for the purpose of reasonable proximity is overly restrictive. The Board believes that for a multiple group credit union a service facility should be defined as a place where shares are

accepted for members' accounts, loan applications are accepted, or loans are disbursed. The Board is proposing that ATMs that are wholly-owned by the credit union should be included within the scope of the definition. Furthermore, shared service centers, as long as there is an ownership interest by the credit union, will meet NCUA's service facility definition for select group expansions. The rationale for this position is statutory; that is, wholly-owned ATMs and shared service facilities constitute a credit union for the purpose of the reasonable proximity analysis. It is the Board's intent that select groups that are within reasonable proximity to a credit union, as it is ultimately defined here, may be added to a credit union's field of membership.

Therefore, the Board is amending Chapter 2, Section IV.A.1 of the Chartering Manual to modify the definition of a service facility and to explicitly include ATMs and shared service facilities that a credit union has an ownership interest in as within the definition of a service facility.

3. Associational Common Bond

Under IRPS 99–1, as amended, associational common bonds must have the following three indicia. The group must: (1) Hold meetings open to all members; (2) sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association; and (3) have an authoritative definition of who is eligible for membership. The Chartering Manual then lists other factors that NCUA may consider in determining whether a proper associational common bond exists.

The NCUA Board believes that some groups may have been denied credit union membership because they did not have all three of the required indicia for an associational common bond, although they did possess many of the other factors of a legitimate association. Therefore, the NCUA Board is proposing that the three mandatory requirements be eliminated and be merged into the list of factors to be considered by the agency. The agency will look at the totality of the circumstances when determining whether an associational common bond exists. The Board is also explicitly stating in the Chartering Manual that national associations qualify for credit union service in their entirety if the headquarters are within reasonable proximity to the credit union.

Therefore, the Board is proposing to amend Chapter 2, Section III A.1, to reflect these above cited changes.

4. Occupational Common Bond

The NCUA Board is proposing a fifth definition of occupational common bond. Under existing policy, an occupational common bond is based on:

- Employment, or a long-term contractual relationship equivalent to employment, in a single corporation or other legal entity;
- Employment in a corporation or other legal entity with a controlling ownership interest, which shall not be less than 10 percent, in or by another legal entity;
- Employment in a corporation or other legal entity which is related to another legal entity, such as a company under contract and possessing a strong dependency relationship with another company; and
- Employment or attendance at a school.

The Board has stated previously that an occupational common bond can also legally include designations based on employment in a trade, industry or profession (TIP), but has not implemented such an approach based on agency operational concerns. 65 FR 64512, 64519, Oct. 27, 2000. The Board has continued to review this issue and believes that staff has developed a proposal that will minimize these concerns.

Pursuant to this proposed policy, an occupational common bond could be based on TIP. This type of common bond can include employment at any number of corporations or other legal entities, that while not under common ownership, share a common bond by virtue of producing similar products, providing similar services, or sharing the same profession or trade. For obvious reasons, this type of occupational common bond would not require a letter from the sponsor to charter or convert to this type of occupational common bond credit union. However, when a credit union is chartered or converts to a TIP it must submit a business plan that addresses how it will serve the TIP and how it will verify an individual is part of that TIP. Verification may include a state license, professional license, payroll statements or any other documentation that indicates that an individual is a member of the specified TIP.

The common bond of a TIP credit union is not based on a relationship with a single employer, but rather, on the commonality of interests or characteristics of those groups comprising the TIP. Individuals in those groups will share the same purpose, interests, or endeavors as a result of their employment. If the persons in the different groups possess common interests that are reasonably tied to a common endeavor or purpose, then the groups can be combined to form a single field of membership and, thus, a single common bond credit union. For example, previously, a teachers' credit union could only be chartered to serve a specific school or school district. In fact, all teachers share a unique and strong common purpose. They have common interests and share a common endeavor. This significant commonality of interest constitutes a common bond of profession and meets the statutory requirement of ''one group that has a common bond of occupation.'' Similarly, all members of the U.S. armed forces share a strong commonality of interest beyond the single employer concept of a particular military branch or military installation. The NCUA Board recognizes that because of this commonality of interest it may be easier to define a TIP based on a trade or profession than it may be for defining a TIP for an entire industry.

The TIP common bond charter can be similar to, but distinguishable from, a common bond based on a single corporation or employer. For example, all Navy personnel would qualify as a single common group or TIP, but all teachers would only qualify as a TIP. Therefore, in some instances, a TIP might, for all practical purposes, be the same as a traditional occupational common bond.

While there is some latitude in defining trade, industry, or profession, the groups must have a close nexus and must be narrowly defined. NCUA will evaluate such factors as the nature, size and diversity of the trade, industry, or profession. For example, all manufacturing enterprises in Seattle, Washington, would not qualify since manufacturing, in and of itself, is overly broad and would include manufacturing of all types of products. All television manufacturers in Seattle, however, would qualify, since this relates to a specific type of manufactured product. This TIP, however, would not also include all television retailers.

The TIP must be narrowly defined and in most cases, will contain a geographic limitation. The geographic limitation will generally correspond to the credit union's current or planned service area.

Since a TIP must be narrowly defined it cannot include third-party vendors and other suppliers. In this regard, a TIP might be more limiting than the traditional definition of an occupational common bond. For example, a certified public accountant (CPA) TIP would not include clerical and other

administrative staff. Another example is the airline service industry. Such a TIP would not include airline manufacturers, but simply the employees involved in airline transport.

Certain generic terms, by their very nature, are overly broad and subject to confusion in defining a TIP. Like manufacturing, the electronics, telecommunications, energy, and entertainment industries are examples of industries that include all types of services and products. It is NCUA's present intent that a TIP should be limited to a specific service or product within that industry, which could also include the exclusive retail outlet for that product or service. For example, the consumer electronics industry includes televisions, cameras, watches, computers, radios, etc. A qualifying TIP in the consumer electronics industry, however, would be limited to, for example, the production, manufacturing, and marketing of computers. As another example, a healthcare TIP would include hospitals, physicians' offices, home healthcare providers, medical & diagnostic labs, clinics and surgery centers. However, a healthcare TIP would not include pharmacies, retail establishments selling healthcare products or dual use services such as therapeutic massages.

As a general rule, if a corporation manufactures multiple products, that corporation's employees could not be included in a manufacturing TIP. Of course, that corporation's employees could be eligible for a single occupational common bond credit union based on employment by a single employer.

The retail business, by its very nature, is difficult to define as a TIP because, in most circumstances, it lacks a close nexus in providing similar products or services. The NCUA Board is seeking comment on how to structure an industry-based, occupational common bond involving the retail business. The NCUA Board is also seeking comment on whether the final version of this rule should contain a preapproved list of acceptable TIPs.

Because of the relative complexity of this TIP policy, it is the Board's intent to allow a TIP to be the occupational common bond only for a single common bond credit union. In addition, as stated above, a TIP credit union will also have a geographic limitation. The proposal also allows multiple common bond credit unions to convert to a TIP credit union based on a single occupational common bond. Upon such a conversion, the credit union can retain its members of record. Accordingly, the Board is proposing to amend Chapter 1, Section XI and Chapter 2, Section II to incorporate the TIP concept.

5. Economic Advisability and the Process for Select Group Expansions of Less than 3000

Economic advisability is critically important both in the chartering process and in the addition of select groups to a multiple common bond credit union. In the first instance, chartering, NCUA has long taken the position that it will not grant a charter unless it determines that the credit union ''will be viable and that it will provide needed services to its members,'' and will have a ''reasonable opportunity to succeed.'' Ignoring this basic, yet very important, chartering requirement would create unnecessary and undue risks to the National Credit Union Share Insurance Fund. Perhaps equally important is the fact that members of a credit union with no reasonable chance of success are needlessly harmed. Therefore, NCUA's responsibility is to assure that if a credit union is chartered, it has, at a minimum, a reasonable opportunity to succeed in today's financial marketplace. This issue was thoroughly discussed in the preambles to IRPS 99–1 and IRPS 00–1.

Second, NCUA also takes into consideration economic advisability, as well as other criteria, when determining whether to approve the addition of groups to a multiple common bond credit union. CUMAA requires that before NCUA approves the addition of any group, NCUA must determine, in writing, that:

(1) The applicant credit union has not committed any material unsafe and unsound practices within the preceding 1-year period,

(2) The applicant credit union is adequately capitalized,

(3) The applicant credit union has the administrative capability to serve the proposed membership,

(4) The benefit to the members outweighs any potential harm the expansion may have on another credit union, and

(5) The applicant credit union has met such additional requirements as the Board may prescribe.

In effect, an administrative process must be established to address these issues, particularly since the statute requires that the determination must be in writing.

Another essential element NCUA must consider before a group can be added to a multiple common bond credit union is economic advisability relative to whether a group can form a separate credit union. The statute clearly sets forth this standard. It states:

> [T]he Board shall—(A) encourage the formation of separately chartered credit unions instead of approving an application to include an additional group within the field of membership of an existing credit union whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union.

Consequently, NCUA must determine in writing not only that the five statutory criteria are met, but also must determine that the group is not economically advisable for the purposes of forming a separate credit union. The burden, as it should be, is on NCUA to make this determination. This assessment is essentially the same one that NCUA would make if the group requested a separate charter: would a new credit union consisting only of this group have a reasonable chance of survival? In other words, regardless of the group's size, NCUA must determine if the group could stand on its own as a separate credit union. If the group could safely form its own credit union, then the statute requires that it not be considered a group for expansion purposes.

As set forth in the preamble to IRPS 99–1, it remains the intent of the Board that every group being added to a multiple common bond credit union should be analyzed to determine whether the group has the capability and desire to support an independent operation. This requirement, however, must be balanced with operational feasibility. To overlook the complexities of providing financial services will only lead to additional supervisory problems. The regulatory approach, therefore, should incorporate known economic factors and the likelihood of the group's success in establishing and managing a new credit union in today's marketplace.

To ease the regulatory burden of establishing a new credit union, the NCUA Board adopted an express chartering procedure in 2000. However, to restate the discussion in IRPS 99–1, it is the Board's intent that a group desiring a separate charter should have every reasonable opportunity to form a new credit union, but this must be balanced with known economic hurdles and start-up operational requirements. Similarly, a group not wanting to form a separate credit union should be analyzed closely since desire and initiative are critical to successfully chartering a new credit union.

In 1999, in addressing these requirements in relation to the historical data related to chartering new credit unions, the Board developed an expedited process for groups of 200 or less primary potential members.

Although a written determination regarding the various statutory criteria was still required, the expedited process allowed for the processing of groups of 200 or less since it was the Board's view that a group of 200 or less would not be economically advisable. Thus, until October 2000, applicant credit unions applying to add a group of 200 or less simply had to complete the Form 4015–EZ. Additionally, no overlap analysis was required for these small groups. After further study, in 2000, the Board increased the number to 500 in IRPS 00–1.

Empirical experience strongly suggests that the expedited processing number should again be raised. In 2001, a substantial majority of the multiple group expansions approved, 95 percent, were groups of 500 or less. Further, less than one percent of the approved expansions consisted of groups of 3,000 or more. Overall, less than one percent of all applications for multiple group expansions were denied. More importantly though, no group less than 3,000 was denied for the reason it was economically viable to form its own credit union; that is, every group requesting to be added to the field of membership of an existing credit union was determined to not be economically advisable.

NCUA's experience supports the view that only in rare circumstances will a primary potential membership of less than 3,000 be economically advisable. In fact, 3,000 is the same number at or above which Congress requires the agency to look at more closely to determine if the group can form its own credit union. In some circumstances, a smaller number of potential members may be economically advisable, but that appears to be the exception. These smaller groups can be easily identified and processed on a case by case basis.

The NCUA Board believes that, considering the agency's historical experience since 1999, the expedited process number for adding groups should be changed to less than 3,000. In conjunction with this proposed change, it is also proposed that the overlap analysis required of groups of 500 or more should also be changed to 3,000 or more. Again, this is the number at or above which Congress requires the agency to look at more closely to determine if the group can form its own credit union.

6. Community Charters

Over the years, the Board has approved numerous community charter conversions. During this time, the Board has had vast experience in reviewing what constitutes a local community. Because of this experience, the Board is proposing three different definitions of what constitutes a local community.

First, the NCUA Board is proposing that any city, county, or smaller political jurisdiction, regardless of population size, meets the definition of a local community. This has been borne out again and again in community charter packages that the Board has reviewed. Therefore, any credit union that wants to serve such an area would no longer need to provide a letter demonstrating how the area is a community or any other type of documentation demonstrating that the area is a community. This is an irrebutable presumption, regardless of population size. Credit unions can also request an area that comprises only a portion of a county or city and still use the presumption.

Second, the Board has had a vast experience in reviewing local communities that are in multiple jurisdictions. The Board, in an attempt to streamline the conversion process, has reviewed the definition of a metropolitan statistical area and, in general, believes such an area within a certain population size meets the definition of a local community as required by CUMAA and articulated in the Chartering Manual.

The Office of Management and Budget defines a metropolitan statistical area (MSA) as an area that has at least one urbanized area of at least 50,000 and ''comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.'' 65 FR 82228, 82238, Dec 27, 2000.

The Board believes that any area that is an MSA (or its equivalent), or a portion thereof, having up to a million residents may meet the definition of a local community. This view is based on Board experience and the very definition of an MSA. Although the Board is not legally required to limit the population size for this presumption, the Board's experience is more limited for areas with more than one million residents.

If the proposed community meets the MSA criteria and population limits, the credit union must submit a letter describing how the area meets the standards for community interaction and/or common interests. If NCUA does not find sufficient evidence of a community interaction and/or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined local community. The credit union must also provide evidence of the political jurisdictions and population. A credit union can also request a local community that exceeds the population limits but more detailed documentation will be necessary to support that the proposed area is a well-defined local community.

Third, based on its historical experience, the Board is increasing the presumption of a local community from 200,000 residents to 500,000 residents for multiple political jurisdictions that are not part of a single MSA. If the credit union meets this criterion, the credit union must submit a letter describing how the area meets the standards for community interaction and/or common interests. If NCUA does not find sufficient evidence of a community interaction and/or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined local community. The credit union must also provide evidence of the political jurisdictions and population. A credit union can also request a local community that exceeds the population limits but more detailed documentation will be necessary to support that the proposed area is a well-defined local community.

Therefore, the Board is proposing to amend Section V.A.2 of the Chartering Manual to incorporate the three definitions of a local community and the process to obtain each type of community charter.

The Chartering Manual is silent on whether a community charter can apply to convert to serve a different community area. Sometimes a credit union is interested in such a conversion when it serves an area that qualifies as an underserved area and can be added to the field of membership of other credit unions. The NCUA Board believes such a conversion process should be clearly articulated in the Chartering Manual. Therefore, the Board is proposing to amend Section V.F of the Chartering Manual to clearly recognize this unique type of community conversion.

Finally, the Board is clarifying that persons or organizations that regularly do business in the community can be included in the community's charter and are then eligible for membership.

7. Common Bond Conversions

In the sections regarding federal charter conversions for occupational common bond credit unions, associational common bond credit unions, and multiple group common bond credit unions, there is a general three-year prohibition on converting to

another type of charter, except a community charter. The NCUA Board believes this prohibition unduly limits the flexibility needed for federal credit unions to serve their members and make well-reasoned, business decisions. The Board has not been provided any compelling rationale to retain this prohibition so it is proposing to delete this requirement. Therefore, the NCUA Board is proposing to amend Chapter 2, Sections II.F, III.F, and IV.F to delete this restriction.

8. Charter Conversions

If a state charter wants to convert to federal charter and obtained a group or area through a procedure equivalent to NCUA's emergency merger provision, the credit union can retain that field of membership when it converts to a federal charter. Therefore, the Board is proposing that Chapter IV, Section II should be amended to state that a state charter that converts to a federal charter may retain any groups obtained through a state's emergency field of membership provision. Any subsequent expansions or amendments to the field of membership of the federal charter must comply with federal field of membership policies.

Currently, a multiple group state chartered credit union can convert to a multiple group federal charter and generally retain its multiple groups. Is there a compelling rationale to permit other types of state charters to retain their state fields of membership when converting to federal charters? The NCUA Board is also seeking comment on other ways to streamline the procedure for converting from a state charter to federal charter.

9. The Appeal Process

The Board is aware that some credit unions have become confused about the use of a request for reconsideration during the appeal process. To alleviate this confusion, the Board is clarifying that if a credit union seeks a second reconsideration of an issue, and it is still not approved by the region, it will be treated as an appeal and sent to the central office so that it can be prepared for a Board decision. As a reminder, a reconsideration should provide new evidence and should address any deficiencies cited by the regional director in the disapproval letter.

Chapter 3 on underserved areas does not have a separate appeals section. It has been the practice of the agency to follow the appeals procedure detailed in chapters 1 and 2 of the Chartering Manual. In any case, to alleviate any concern, the NCUA Board is adding an appeal provision to this section.

10. Miscellaneous Clarifications

The NCUA Board is also proposing three other amendments to conform to other proposals made by the NCUA Board or to clarify existing policy. First, Chapter 1, Section XII needs to be amended to conform to the Board's proposal on foreign branching. Any existing or proposed branches on United States military installations or United States embassies are unaffected by this proposal.

Second, the Board is clarifying how corporate accounts can be cited in a credit union's charter by adding them to the list of groups in ''Other Persons Eligible for Credit Union Membership.'' The Board has permitted community charters to adopt standard language which allows corporations or other legal entities within the community to become members without the need for the credit union to request permission from NCUA in each instance. The Board now wishes to streamline this process for single and multiple group charters by allowing them to adopt a standard clause which would permit membership for their corporate and other business sponsors.

The Board wants to clarify an issue involving spin-offs. A spin-off is an affirmative decision to terminate membership. As such, all members of the group to be spun off, regardless of how they voted, will be transferred if the spin-off is approved by the voting membership. Since the group is being removed from the original credit union's field of membership, all accounts must be transferred to the new credit union. The original credit union cannot maintain members of record.

Finally, the NCUA Board is proposing some technical wording changes to all of the chapters in the Chartering Manual and updating the forms in the Appendix. Most of these changes are necessary to conform the language of the Chartering Manual to the proposals described above or to make a section easier to understand. These remaining changes are not substantive.

B. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions, primarily those under one million dollars in assets. The proposed amendments will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Office of Management and Budget control number assigned to § 701.1 is 3133–0015, and to the forms included in appendix D is 3133–0016. NCUA has determined that the proposed amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the proposed rules do not constitute a policy that has federalism implications for purposes of the executive order.

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

The NCUA has determined that the proposed rules would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed amendments are understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and record keeping requirements.

By the National Credit Union Administration Board on November 21, 2002.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

Section 701.6 is also authorized by 15 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 3601–3610.

Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 02–5, Chartering and Field of Membership Policy (IRPS 02–5). Copies may be obtained by contacting NCUA at the address found in Section 792.2(g)(1) of this chapter.

(Approved by the Office of Management and Budget under control number 3133–0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 02–5) does not appear in the Code of Federal Regulations.

3. IRPS 02–5 is added to read as follows:

Chapter 1—Federal Credit Union Chartering

I—Goals of NCUA Chartering Policy

The National Credit Union Administration's (NCUA) chartering and field of membership policies are directed toward achieving the following goals:

- To encourage the formation of credit unions;
- To uphold the provisions of the Federal Credit Union Act;
- To promote thrift and credit extension;
- To promote credit union safety and soundness; and
- To make quality credit union service available to all eligible persons.

NCUA may grant a charter to single occupational/associational groups, multiple groups, or communities if:

- The occupational, associational, or multiple groups possess an appropriate common bond or the community represents a well-defined local community, neighborhood, or rural district;
- The subscribers are of good character and are fit to represent the proposed credit union; and
- The establishment of the credit union is economically advisable.

Generally, these are the primary criteria that NCUA will consider. In unusual circumstances, however, NCUA may examine other factors, such as other federal law or public policy, in deciding if a charter should be approved.

Unless otherwise noted, the policies outlined in this manual apply only to federal credit unions.

II—Types of Charters

The Federal Credit Union Act recognizes three types of federal credit union charters—single common bond (occupational and associational), multiple common bond (more than one group each having a common bond of occupation or association), and community.

The requirements that must be met to charter a federal credit union are described in Chapter 2. Special rules for credit unions serving low-income groups are described in Chapter 3.

If a federal credit union charter is granted, Section 5 of the charter will describe the credit union's field of membership, which defines those persons and entities eligible for membership. Generally, federal credit unions are only able to grant loans and provide services to persons within the field of membership who have become members of the credit union.

III—Subscribers

Federal credit unions are generally organized by persons who volunteer their time and resources and are responsible for determining the interest, commitment, and economic advisability of forming a federal credit union. The organization of a successful federal credit union takes considerable planning and dedication.

Persons interested in organizing a federal credit union should contact one of the credit union trade associations or the NCUA regional office serving the state in which the credit union will be organized. Lists of NCUA offices and credit union trade associations are shown in the appendices. NCUA will provide information to groups interested in pursuing a federal charter and will assist them in contacting an organizer.

While anyone may organize a credit union, a person with training and experience in chartering new federal credit unions is generally the most effective organizer. However, extensive involvement by the group desiring credit union service is essential.

The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the proposed members are critical to the chartering process.

The Federal Credit Union Act requires that seven or more natural persons — the ''subscribers''—present to NCUA for approval a sworn organization certificate stating at a minimum:

- The name of the proposed federal credit union;
- The location of the proposed federal credit union and the territory in which it will operate;
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each;
- The initial par value of the shares;
- The detailed proposed field of membership; and
- The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

False statements on any of the required documentation filed in obtaining a federal credit union charter may be grounds for federal criminal prosecution.

IV—Economic Advisability

IV.A—General

Before chartering a federal credit union, NCUA must be satisfied that the institution will be viable and that it will provide needed services to its members. Economic advisability, which is a determination that a potential charter will have a reasonable opportunity to succeed, is essential in order to qualify for a credit union charter.

NCUA will conduct an independent on-site investigation of each charter application to ensure that the proposed credit union can be successful. In general, the success of any credit union depends on: (a) The character and fitness of management; (b) the depth of the members' support; and (c) present and projected market conditions.

IV.B—Proposed Management's Character and Fitness

The Federal Credit Union Act requires NCUA to ensure that the subscribers are of good ''general character and fitness.'' Prospective officials and employees will be the subject of credit and background investigations. The investigation report must demonstrate each applicant's ability to effectively handle financial matters. Employees and officials should also be competent, experienced, honest and of good character. Factors that may lead to disapproval of a prospective official or employee include criminal convictions, indictments, and acts of

fraud and dishonesty. Further, factors such as serious or unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

NCUA also needs reasonable assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the proposed federal credit union a success.

Section 701.14 of NCUA's Rules and Regulations sets forth the procedures for NCUA approval of officials of newly chartered credit unions. If the application of a prospective official or employee to serve is not acceptable to the regional director, the group can propose an alternate to act in that individual's place. If the charter applicant feels it is essential that the disqualified individual be retained, the individual may appeal the regional director's decision to the NCUA Board. If an appeal is pursued, action on the application may be delayed. If the appeal is denied by the NCUA Board, an acceptable new applicant must be provided before the charter can be approved.

IV.C—Member Support

Economic advisability is a major factor in determining whether the credit union will be chartered. An important consideration is the degree of support from the field of membership. The charter applicant must be able to demonstrate that membership support is sufficient to ensure viability.

NCUA has not set a minimum field of membership size for chartering a federal credit union. Consequently, groups of any size may apply for a credit union charter and be approved if they demonstrate economic advisability. However, it is important to note, that often the size of the group is indicative of the potential for success. For that reason, a charter application with fewer than 3,000 primary potential members (*e.g.*, employees of a corporation or members of an association) may not be economically advisable. Therefore, a charter applicant with a proposed field of membership of fewer than 3,000 primary potential members may have to provide more support than an applicant with a larger field of membership. For example, a small occupational or associational group may be required to demonstrate a commitment for long-term support from the sponsor.

IV.D—Present and Future Market Conditions—Business Plan

The ability to provide effective service to members, compete in the marketplace, and to adapt to changing market conditions are key to the survival of any enterprise. Before NCUA will charter a credit union, a business plan based on realistic and supportable projections and assumptions must be submitted.

The business plan should contain, at a minimum, the following elements:

- Mission statement;
- Analysis of market conditions, including if applicable, geographic, demographic, employment, income, housing, and other economic data;
- Evidence of member support;
- Goals for shares, loans, and for number of members;
- Financial services needed/desired;
- Financial services to be provided to members of all segments within the field of membership;
- How/when services are to be implemented;
- Organizational/management plan addressing qualification and planned training of officials/employees;
- Continuity plan for directors, committee members and management staff;
- Operating facilities, to include office space/equipment and supplies, safeguarding of assets, insurance coverage, etc.;
- Type of record keeping and data processing system;
- Detailed semiannual pro forma financial statements (balance sheet, income and expense projections) for 1st and 2nd year, including assumptions—*e.g.*, loan and dividend rates;
- Plans for operating independently;
- Written policies (shares, lending, investments, funds management, capital accumulation, dividends, collections, etc.);
- Source of funds to pay expenses during initial months of operation, including any subsidies, assistance, etc., and terms or conditions of such resources; and
- Evidence of sponsor commitment (or other source of support) if subsidies are critical to success of the federal credit union. Evidence may be in the form of letters, contracts, financial statements from the sponsor, and any other such document on which the proposed federal credit union can substantiate its projections.

While the business plan may be prepared with outside assistance, the subscribers and proposed officials must understand and support the submitted business plan.

V—Steps in Organizing a Federal Credit Union

V.A—Getting Started

Following the guidance contained throughout this policy, the organizers should submit wording for the proposed field of membership (the persons, organizations and other legal entities the credit union will serve) to NCUA early in the application process for written preliminary approval. The proposed field of membership must meet all common bond or community requirements.

Once the field of membership has been given preliminary approval, and the organizer is satisfied the application has merit, the organizer should conduct an organizational meeting to elect seven to ten persons to serve as subscribers. The subscribers should locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as chief operating officer/manager of the proposed credit union.

Subsequent organizational meetings may be held to discuss the progress of the charter investigation, to announce the proposed slate of officials, and to respond to any questions posed at these meetings.

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors of the proposed federal credit union. The new board of directors will then appoint the supervisory committee.

V.B—Charter Application Documentation

V.B.1—General

As discussed previously in this Chapter, the organizer of a federal credit union charter must, at a minimum, provide evidence that:

- The group(s) possess an appropriate common bond or the geographical area to be served is a well-defined local community, neighborhood, or rural district;
- The subscribers, prospective officials, and employees are of good character and fitness; and
- The establishment of the credit union is economically advisable.

As part of the application process, the organizer must submit the following forms, which are available in Appendix D of this Manual:

- Federal Credit Union Investigation Report, NCUA 4001;
- Organization Certificate, NCUA 4008;
- Report of Official and Agreement to Serve, NCUA 4012;
- Application and Agreements for Insurance of Accounts, NCUA 9500; and

• Certification of Resolutions, NCUA 9501.

Each of these forms is described in more detail in the following sections.

V.B.2—Federal Credit Union Investigation Report, NCUA 4001

The application for a new federal credit union will be submitted on NCUA 4001. (State-chartered credit unions applying for conversion to federal charter will use NCUA 4000. See Chapter 4 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request.

V.B.3—Organization Certificate, NCUA 4008

This document, which must be completed by the subscribers, includes the seven criteria established by the Federal Credit Union Act. NCUA staff assigned to the case will assist in the proper completion of this document.

V.B.4—Report of Official and Agreement to Serve, NCUA 4012

This form documents general background information of each official and employee of the proposed federal credit union. Each official and employee must complete and sign this form. The organizer must review each of the NCUA 4012s for elements that would prevent the prospective official or employee from serving. Further, such factors as serious, unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

V.B.5—Application and Agreements for Insurance of Accounts, NCUA 9500

This document contains the agreements with which federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts. The document must be completed and signed by both the chief executive officer and chief financial officer. A federal credit union must qualify for federal share insurance.

V.B.6—Certification of Resolutions, NCUA 9501

This document certifies that the board of directors of the proposed federal credit union has resolved to apply for NCUSIF insurance of member accounts and has authorized the chief executive officer and recording officer to execute the Application and Agreements for Insurance of Accounts. Both the chief executive officer and recording officer of the proposed federal credit union must sign this form.

VI—Name Selection

It is the responsibility of the federal credit union organizers or officials of an existing credit union to ensure that the proposed federal credit union name or federal credit union name change does not constitute an infringement on the name of any corporation in its trade area. This responsibility also includes researching any service marks or trademarks used by any other corporation (including credit unions) in its trade area. NCUA will ensure, to the extent possible, that the credit union's name:

• Is not already being officially used by another federal credit union;

• Will not be confused with NCUA or another federal or state agency, or with another credit union; and

• Does not include misleading or inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be ''Federal Credit Union.''

The word ''community,'' while not required, can only be included in the name of federal credit unions that have been granted a community charter.

VII—NCUA Review

VII.A—General

Once NCUA receives a complete charter application package, an acknowledgment of receipt will be sent to the organizer. At some point during the review process, a staff member will be assigned to perform an on-site contact with the proposed officials and others having an interest in the proposed federal credit union.

NCUA staff will review the application package and verify its accuracy and reasonableness. A staff member will inquire into the financial management experience and the suitability and commitment of the proposed officials and employees, and will make an assessment of economic advisability. The staff member will also provide guidance to the subscribers in the proper completion of the Organization Certificate, NCUA 4008.

Credit and background investigations may be conducted concurrently by NCUA with other work being performed by the organizer and subscribers to reduce the likelihood of delays in the chartering process.

The staff member will analyze the prospective credit union's business plan for realistic projections, attainable goals, adequate service to all segments of the field of membership, sufficient start-up capital, and time commitment by the proposed officials and employees. Any concerns will be reviewed with the organizer and discussed with the prospective credit union's officials. Additional on-site contacts by NCUA staff may be necessary. The organizer and subscribers will be expected to take the steps necessary to resolve any issues or concerns. Such resolution efforts may delay processing the application.

NCUA staff will then make a recommendation to the regional director regarding the charter application. The recommendation may include specific provisions to be included in a Letter of Understanding and Agreement. In most cases, NCUA will require the prospective officials to adhere to certain operational guidelines. Generally, the agreement is for a limited term of two to four years. A sample Letter of Understanding and Agreement is found in Appendix B.

VII.B—Regional Director Approval

Once approved, the board of directors of the newly formed federal credit union will receive a signed charter and standard bylaws from the regional director. Additionally, the officials will be advised of the name of the examiner assigned responsibility for supervising and examining the credit union.

VII.C—Regional Director Disapproval

When a regional director disapproves any charter application, in whole or in part, the organizer will be informed in writing of the specific reasons for the disapproval. Where applicable, the regional director will provide information concerning options or suggestions that the applicant could consider for gaining approval or otherwise acquiring credit union service. The letter of denial will include the procedures for appealing the decision.

VII.D—Appeal of Regional Director Decision

If the regional director denies a charter application, in whole or in part, that decision may be appealed to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reasons for denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal with a recommendation to the NCUA Board.

Before appealing, the prospective group may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration must address the reasons for the initial denial. The request will not be considered as an appeal, but as a request for

reconsideration by the regional director. A request for reconsideration will contain new and material evidence. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the charter application is again denied, the group may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

VII.E—Commencement of Operations

Assistance in commencing operations is generally available through the various credit union trade organizations listed in Appendix E.

All new federal credit unions are also encouraged to establish a mentor relationship with a knowledgeable, experienced credit union individual or an existing, well-operated credit union. The mentor should provide guidance and assistance to the new credit union through attendance at meetings and general oversight review. Upon request, NCUA will provide assistance in finding a qualified mentor.

VIII—Future Supervision

Each federal credit union will be examined regularly by NCUA to determine that it remains in compliance with applicable laws and regulations and to determine that it does not pose undue risk to the NCUSIF. The examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation).

The examiner will be responsible for monitoring the progress of the credit union and providing the necessary advice and guidance to ensure it is in compliance with applicable laws and regulations. The examiner will also monitor compliance with the terms of any required Letter of Understanding and Agreement. Typically, the examiner will require the credit union to submit copies of monthly board minutes and financial statements.

The Federal Credit Union Act requires all newly chartered credit unions, up to two years after the charter anniversary date, to obtain NCUA approval prior to appointment of any new board member, credit or supervisory committee member, or senior executive officer. Section 701.14 of the NCUA Rules and Regulations sets forth the notice and application requirements. If NCUA issues a Notice of Disapproval, the newly chartered credit union is prohibited from making the change.

NCUA may disapprove an individual serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual indicates it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by or associated with the credit union. If a Notice of Disapproval is issued, the credit union may appeal the decision to the NCUA Board.

IX—Corporate Federal Credit Unions

A corporate federal credit union is one that is operated primarily for the purpose of serving other credit unions. Corporate federal credit unions operate under and are administered by the NCUA Office of Corporate Credit Unions.

X—Groups Seeking Credit Union Service

NCUA will attempt to assist any group in chartering a credit union or joining an existing credit union. If the group is not eligible for federal credit union service, NCUA will refer the group to the appropriate state supervisory authority where different requirements may apply.

XI—Field of Membership Designations

NCUA will designate a credit union based on the following criteria:

Single Occupational: If a credit union serves a single occupational sponsor, such as ABC Corporation, it will be designated as an occupational credit union. A single occupational common bond credit union may also serve a trade, industry, or profession (TIP), such as all teachers.

Single Associational: If a credit union serves a single associational sponsor, such as the Knights of Columbus, it will be designated as an associational credit union.

Multiple Common Bond: If a credit union serves more than one group, each of which has a common bond of occupation and/or association, it will be designated as a multiple common bond credit union.

Community: All community credit unions will be designated as such, followed by a description of their geographic boundaries (*e.g.* city or county).

Credit unions desiring to confirm or submit an application to change their designations should contact the appropriate NCUA regional office.

XII—Foreign Branching

Federal credit unions are permitted to serve foreign nationals within their fields of membership wherever they reside provided they have the ability, resources, and management expertise to serve such persons. Before a credit union opens a branch outside the United States, it must submit an application to do so and have prior written approval of the regional director. A federal credit union may establish a service facility on a United States military installation or United States embassy without prior NCUA approval. Refer to Section 741.11 of NCUA's Rules and Regulations for application and business plan requirements.

Chapter 2—Field of Membership Requirements for Federal Credit Unions

I—Introduction

I.A.1—General

As set forth in Chapter 1, the Federal Credit Union Act provides for three types of federal credit union charters—single common bond (occupational or associational), multiple common bond (multiple groups), and community. Section 109 (12 U.S.C. 1759) of the Federal Credit Union Act sets forth the membership criteria for each of these three types of credit unions.

The field of membership, which is specified in Section 5 of the charter, defines those persons and entities eligible for membership. A single common bond federal credit union consists of one group having a common bond of occupation or association. A multiple common bond federal credit union consists of more than one group, each of which has a common bond of occupation or association. A community federal credit union consists of persons or organizations within a well-defined local community, neighborhood, or rural district.

Once chartered, a federal credit union can amend its field of membership; however, the same common bond or community requirements for chartering the credit union must be satisfied. Since there are differences in the three types of charters, special rules, which are fully discussed in the following sections of this Chapter, may apply to each.

I.A.2—Special Low-Income Rules

Generally, federal credit unions can only grant loans and provide services to persons who have joined the credit union. The Federal Credit Union Act states that one of the purposes of federal credit unions is ''to serve the productive and provident credit needs of individuals of modest means.'' Although field of membership requirements are applicable, special rules set forth in Chapter 3 may apply to low-income designated credit unions and those credit unions assisting low-income groups or to a federal credit

union that adds an underserved community to its field of membership.

II—Occupational Common Bond

II.A.1—General

A single occupational common bond federal credit union may include in its field of membership all persons and entities who share that common bond. NCUA permits a person's membership eligibility in a single occupational common bond group to be established in five ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity with a controlling ownership interest (which shall not be less than 10 percent) in or by another legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of a single occupational common bond;
- Employment or attendance at a school makes that person part of a single occupational common bond (see Chapter 2, Section III.A.1); or
- Employment in the same Trade, Industry, or Profession (TIP) (see Chapter 2, Section II.A.2).

A geographic limitation is not a requirement for a single occupational common bond. However, for purposes of describing the field of membership, the geographic areas being served may be included in the charter. For example:

- Employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation and subsidiaries;
- Employees of ABC Corporation who are paid from * * *;
- Employees of ABC Corporation who are supervised from * * *;
- Employees of ABC Corporation who are headquartered in * * *; and/or
- Employees of ABC Corporation who work in the United States.

The corporate or other legal entity (*i.e.*, the employer) may also be included in the common bond—*e.g.*, ''ABC Corporation.'' The corporation or legal entity will be defined in the last clause in Section 5 of the credit union's charter.

A charter applicant must provide documentation to establish that the single occupational common bond requirement has been met.

Some examples of single occupational common bonds are:

- Employees of the Hunt Manufacturing Company who work in West Chester, Pennsylvania. (common bond—same employer with geographic definition);
- Employees of the Buffalo Manufacturing Company who work in the United States. (common bond—same employer with geographic definition);
- Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond—same employer with geographic definition);
- Employees of Johnson Soap Company and its majority owned subsidiary, Johnson Toothpaste Company, who work in, are paid from, are supervised from, or are headquartered in Augusta and Portland, Maine. (common bond—parent and subsidiary company with geographic definition);
- Employees of MMLLJS contractor who work regularly at the U.S. Naval Shipyard in Bremerton, Washington. (common bond—employees of contractors with geographic definition);
- Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from the Newport Beach Medical Center, Newport Beach, California. (single corporation with geographic definition);
- Employees of JLS, Incorporated and MJM, Incorporated working for the LKM Joint Venture Company in Catalina Island, California. (common bond—same employer—ongoing dependent relationship);
- Employees of and students attending Georgetown University. (common bond—same occupation);
- Employees of all the schools supervised by the Timbrook Board of Education in Timbrook, Georgia. (common bond—same employer); or
- All licensed nurses in Fairfax County (occupational common bond TIP).

Some examples of insufficiently defined single occupational common bonds are:

- Employees of manufacturing firms in Seattle, Washington. (no defined occupational sponsor; overly broad TIP);
- Persons employed or working in Chicago, Illinois. (no occupational common bond);

II.A.2—Trade, Industry, or Profession

A common bond based on employment in a trade, industry, or profession can include employment at any number of corporations or other legal entities that—while not under common ownership—have a common bond by virtue of producing similar products or providing similar services.

In general, a geographic limitation is required for a TIP credit union. The geographic limitation will be part of the credit union's charter. More than one federal credit union may serve the same trade, industry, or profession, even if both credit unions are in the same geographic location.

This type of occupational common bond is only available to single common bond credit unions. A TIP cannot be added to a multiple common bond or community field of membership.

To obtain a TIP designation, the proposed or existing credit union must submit a request to the regional director. New charter applicants must follow the documentation requirements in Chapter 1. A business plan on how the credit union will serve the group must be submitted with the request to serve the TIP. The business plan also must address how the credit union will verify the TIP. Examples of such verification include state licenses, professional licenses, organizational memberships, pay statements, union membership, or employer certification. The regional director must approve this type of field of membership before a credit union can convert to a TIP. After conversion, a credit union can retain members of record but cannot add new members from its previous group or groups, unless its part of the TIP.

While proposed or existing single common bond credit unions have some latitude in defining a trade, industry, or profession occupational common bond, it cannot be defined so broadly as to include groups in fields which are not closely related. For example, all textile workers, all nurses, all airline employees, or all U.S. military personnel may qualify under this category. However, employees of all manufacturing companies would not. The common bond relationship must be one that demonstrates a narrow commonality of interests within a specific trade, industry, or profession. If a credit union wants to serve a physician TIP, they can serve all physicians but that does not mean they can also serve all clerical staff in the office. However, if the TIP is based on the health care industry then clerical staff would be able to be served by the credit union. Clients or customers of the TIP are not eligible for credit union membership (*e.g.*, patients in hospitals).

Any company that is involved in more than one industry cannot be included in an industry TIP (*e.g.*, a company that makes tobacco products, food products, and electronics). However, employees of these companies may be eligible for membership in a

trade/professional occupational common bond.

Section II.B on Occupational Common Bond amendments does not apply to a TIP common bond. Unless NCUA has safety and soundness concerns, removing or changing a geographical limitation can be processed as a housekeeping amendment. If safety and soundness concerns are present, the regional director may require additional information before the request can be processed.

Section II.H applies to TIP designated credit unions except for retirees and corporate accounts.

If a TIP designated credit union wishes to convert to a different TIP or employer-based occupational common bond, or different charter type, it only retains members of record after the conversion.

II.B—Occupational Common Bond Amendments

II.B.1—General

Section 5 of every single occupational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a new group sharing the credit union's common bond is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, if the entire field of membership is acquired by another corporation, the credit union can serve the employees of the new corporation and any subsidiaries after receiving NCUA approval.

Third, a federal credit union qualifies to change its common bond from:

- A single occupational common bond to a single associational common bond;
- A single occupational common bond to a community charter; or
- A single occupational common bond to a multiple common bond.

Fourth, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or because a portion of the group is no longer in existence.

An existing single occupational common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the occupational common bond requirement has been met.

The regional director must approve all amendments to an occupational common bond credit union's field of membership. The regional director may approve an amendment to expand the field of membership if:

- The common bond requirements of this section are satisfied;
- The group to be added has provided a written request for service to the credit union; and
- The change is economically advisable.

II.B.2—Corporate Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This requires a change to the credit union's field of membership. NCUA will not permit a single common bond credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

II.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely effect on the credit union's operations and financial condition. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision.

II.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015–EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

The NCUA 4015–EZ must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
- How the group shares the credit union's occupational common bond;
- That the group wants to be added to the applicant federal credit union's field of membership;
- The number of persons currently included within the group to be added and their locations.

II.C—NCUA'S Procedures for Amending the Field of Membership

II.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

II.C.2—Regional Director's Decision

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. NCUA will carefully consider the economic advisability of expanding the field of membership of a credit union with financial or operational problems.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

II.C.3—Regional Director Approval

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

II.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedure.

II.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration must address the reasons for the initial denial. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. A request for reconsideration will contain new and material evidence. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director. A second request for reconsideration, will be treated as an appeal to the NCUA Board.

II.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single occupational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

II.D.1—Mergers

Generally, the requirements applicable to field of membership expansions found in this chapter apply to mergers where the continuing credit union has a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

If a single occupational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

II.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions and without changing the character of the continuing federal credit union for future amendments. Under this authority, therefore, a single occupational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is also an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's original single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

II.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of

the purchased and/or assumed credit union and, as applicable, the state regulators.

II.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have a common bond (applies only to single occupational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

II.E—Overlaps

II.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit single occupational federal credit unions to overlap any other charter without performing an overlap analysis.

II.E.2—Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. NCUA will permit a complete overlap of the credit unions' fields of membership.

If a sponsor organization sells off a group, new members can no longer be served unless they otherwise qualify for membership in the credit union.

Credit unions must submit documentation explaining the restructuring and providing information regarding the new organizational structure.

II.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

II.F—Charter Conversion

A single occupational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A single occupational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non-common bond group that is within a reasonable proximity of a service facility. Groups within the existing charter may be retained and continue to be served. However, future amendments, including any expansions of the original single common bond group, must be done in accordance with multiple common bond policy.

II.G—Removal of Groups From the Field of Membership

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. If the regional director concurs with the request, membership may continue for those who are already members under the ''once a member, always a member'' provision of the Federal Credit Union Act.

II.H—Other Persons Eligible for Credit Union Membership

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Member of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent,

grandparent, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an ''immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

III—Associational Common Bond

III.A.1—General

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Separately chartered associational groups can establish a single common bond relationship if they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);
- Non-natural person members of the association;
- Employees of the association (for example, employees of the labor union or employees of the church); and
- The association.

Generally, a single associational common bond does not include a geographic definition. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds should include a definition of the group that may be served based on the effective date of the association's charter, bylaws, and any other equivalent documentation.

The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a group satisfies associational common bond requirements for a federal credit union charter, NCUA will consider the totality of the circumstances, such as:

- Whether members pay dues;
- Whether members participate in the furtherance of the goals of the association;
- Whether the members have voting rights. To meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;
- Whether the association maintains a membership list;
- Whether the association sponsors other activities;
- The association's membership eligibility requirements; and
- The frequency of meetings.

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Individuals or honorary members who only make donations to the association are not eligible to join the credit union. Other classes of membership that do not meet to accomplish the goals of the association would not qualify.

Educational groups—for example, parent-teacher organizations, alumni associations, and student organizations in any school—and church groups constitute associational common bonds and may qualify for a federal credit union charter.

Student groups (*e.g.* students enrolled at a public, private, or parochial school) may constitute either an associational or occupational common bond. For example, students enrolled at a church sponsored school could share a single associational common bond with the members of that church and may qualify for a federal credit union charter. Similarly, students enrolled at a university, as a group by itself, or in conjunction with the faculty and employees of the school, could share a single occupational common bond and may qualify for a federal credit union charter (see Chapter 2,II.A).

Homeowner associations, tenant groups, co-ops, consumer groups, national associations, and other groups of persons having an ''interest in'' a particular cause and certain consumer cooperatives may also qualify as an association.

The terminology ''Alumni of Jacksonville State University'' is insufficient to demonstrate an associational common bond. To qualify as an association, the alumni association must meet the requirements for an associational common bond. The alumni of a school must first join the alumni association, and not merely be alumni of the school to be eligible for membership.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. However, having an incidental client-customer relationship does not preclude an associational charter as long as the associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a condition of membership, may qualify as a valid associational common bond.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of the regional director, a copy of the association's charter, bylaws, or other equivalent documentation, including any legal documents required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership—*e.g.*, ''Sprocket Association''—and will be shown in the last clause of the field of membership.

III.A.2—Subsequent Changes to Association's Bylaws

If the association's membership or geographical definitions in its charter

and bylaws are changed subsequent to the effective date stated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's consideration and approval prior to serving members of the association added as a result of the change.

III.A.3—Sample Single Associational Common Bonds

Some examples of associational common bonds are:

- Regular members of Locals 10 and 13, IBEW, in Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 2001;
- Members of the Hoosier Farm Bureau in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1997;
- Members of the Shalom Congregation in Chevy Chase, Maryland;
- Regular members of the Corporate Executives Association, located in Westchester, New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1997;
- Members of the University of Wisconsin Alumni Association, located in Green Bay, Wisconsin;
- Members of the Marine Corps Reserve Officers Association; or
- Members of St. John's Methodist Church and St. Luke's Methodist Church, located in Toledo, Ohio.

Some examples of insufficiently defined single associational common bonds are:

- All Lutherans in the United States (too broadly defined); or
- Veterans of U.S. military service (group is too broadly defined; no formal association of all members of the group).

Some examples of unacceptable single associational common bonds are:

- Alumni of Amos University (no formal association);
- Customers of Fleetwood Insurance Company (policyholders or primarily customer/client relationships do not meet associational standards);
- Employees of members of the Reston, Virginia Chamber of Commerce (not a sufficiently close tie to the associational common bond); or
- Members of St. John's Lutheran Church and St. Mary's Catholic Church located in Anniston, Alabama (churches are not of the same denomination).

III.B—Associational Common Bond Amendments

III.B.1—General

Section 5 of every associational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons who, or legal entities that, join the credit union and are specified in the field of membership can be served. There are three instances in which Section 5 must be amended by NCUA.

First, a new group that shares the credit union's common bond is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its common bond from:

- A single associational common bond to a single occupational common bond;
- A single associational common bond to a community charter; or
- A single associational common bond to a multiple common bond.

Third, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or a portion of the group is no longer in existence.

An existing single associational federal credit union that submits a request to amend its charter must provide documentation to establish that the associational common bond requirement has been met.

The regional director must approve all amendments to an associational common bond credit union's field of membership. The regional director may approve an amendment to expand the field of membership if:

- The common bond requirements of this section are satisfied;
- The group to be added has provided a written request for service to the credit union; and
- The change is economically advisable.

III.B.2—Organizational Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event requiring a change to the credit union's field of membership. NCUA may not permit a single associational credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

III.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely impact on the credit union's operations and financial condition. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision.

III.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015–EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

The NCUA 4015–EZ must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
- How the group shares the credit union's associational common bond;
- That the group wants to be added to the applicant federal credit union's field of membership;
- The number of persons currently included within the group to be added and their locations.

III.C—NCUA Procedures for Amending the Field of Membership

III.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

III.C.2—Regional Director's Decision

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition,

the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

III.C.3—Regional Director Approval

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

III.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

III.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration must address the reasons for the initial denial. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. A request for reconsideration will contain new and material evidence. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director. A second request for reconsideration will be treated as an appeal to the NCUA Board.

III.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single associational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

III.D.1—Mergers

Generally, the requirements applicable to field of membership expansions found in this section apply to mergers where the continuing credit union is a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state-chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

If a single associational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

III.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions and without changing the character of the continuing federal credit union for future amendments. Under this authority, therefore, a single associational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging

credit union and, as applicable, the state regulators.

III.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

III.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have the same common bond (applies only to single associational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

III.E—Overlaps

III.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit single associational federal credit unions to overlap any other charters without performing an overlap analysis.

III.E.2—Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. NCUA will permit a complete overlap of the credit unions' fields of membership. If a sponsor organization sells off a group, new members can no longer be served unless they otherwise qualify for membership in the credit union.

Credit unions must submit documentation explaining the restructuring and providing information regarding the new organizational structure.

III.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

III.F—Charter Conversions

A single associational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A single associational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non-common bond group that is within a reasonable proximity of a service facility. Groups within the existing charter may be retained and continue to be served. However, future amendments, including any expansions of the original single common bond group, must be done in accordance with multiple common bond policy.

III.G—Removal of Groups From the Field of Membership

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;

• The federal credit union cannot continue to provide adequate service to the group;
• The group has ceased to exist;
• The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or
• The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. If the regional director concurs with the request, membership may continue for those who are already members under the ''once a member, always a member'' provision of the Federal Credit Union Act.

III.H—Other Persons Eligible for Credit Union Membership

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership. These include the following:
• Spouses of persons who died while within the field of membership of this credit union;
• Employees of this credit union;
• Volunteers;
• Member of the immediate family or household;
• Organizations of such persons; and
• Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an ''immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. One example is volunteers working at a church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

IV—Multiple Occupational/ Associational Common Bonds

IV.A.1—General

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot include a TIP or expand using single common bond criteria.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. The non-availability of other credit union service is a factor to be considered in determining whether the group is within reasonable proximity of a credit union wishing to add the group to its field of membership.

A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch network that a credit union has an ownership interest in.

The select group as a whole will be considered to be within a credit union's service area when:
• A majority of the persons in a select group live, work, or gather regularly within the service area;
• The group's headquarters is located within the service area; or
• The group's ''paid from'' or ''supervised from'' location is within the service area.

IV.A.2—Sample Multiple Common Bond Field of Membership

An example of a multiple common bond field of membership is:

''The field of membership of this federal credit union shall be limited to the following:

1. Employees of Teltex Corporation who work in Wilmington, Delaware;

2. Partners and employees of Smith & Jones, Attorneys at Law, who work in Wilmington, Delaware;

3. Members of the M&L Association in Wilmington, Delaware, who qualify for membership in accordance with its charter and bylaws in effect on December 31, 1997.''

IV.B—Multiple Common Bond Amendments

IV.B.1—General

Section 5 of every multiple common bond federal credit union's charter defines the field of membership and select groups the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a new select group is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its charter from:
• A single occupational or associational charter to a multiple common bond charter;
• A multiple common bond to a single occupational or associational charter;
• A multiple common bond to a community charter; or
• A community to a multiple common bond charter.

Third, a federal credit union removes a group from its field of membership through agreement with the group, a spin-off, or because the group no longer exists.

IV.B.2—Numerical Limitation of Select Groups

An existing multiple common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the multiple common bond requirements have been met. The regional director must approve all amendments to a multiple common bond credit union's field of membership.

NCUA will approve groups to a credit union's field of membership if the agency determines in writing that the following criteria are met:

• The credit union has not engaged in any unsafe or unsound practice, as determined by the regional director, which is material during the one year period preceding the filing to add the group;

• The credit union is ''adequately capitalized.'' NCUA defines adequately capitalized to mean the credit union has a net worth ratio of not less than 6 percent. For low-income credit unions or credit unions chartered less than ten years, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement. For any other credit union, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level.

• The credit union has the administrative capability to serve the proposed group and the financial resources to meet the need for additional staff and assets to serve the new group;

• Any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.E of this Chapter are also applicable; and

• If the formation of a separate credit union by such group is not practical and consistent with reasonable standards for the safe and sound operation of a credit union.

A detailed analysis is required for groups of 3,000 or more primary potential members requesting to be added to a multiple common bond credit union. It is incumbent upon the credit union to demonstrate that the formation of a separate credit union by such a group is not practical. The group must provide evidence that it lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisability criteria outlined in Chapter 1. If this can be demonstrated, the group may be added to a multiple common bond credit union's field of membership.

IV.B.3—Documentation Requirements

A multiple common bond credit union requesting a select group expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015 or NCUA 4015–EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

The NCUA 4015–EZ (for groups less than 3,000 potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

That the group wants to be added to the applicant federal credit union's field of membership;

The number of persons currently included within the group to be added and their locations; and

—The group's proximity to credit union's nearest service facility.

• The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

The NCUA 4015 (for groups of 3,000 or more primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—The group's occupational or associational common bond;

—That the group wants to be added to the federal credit union's field of membership;

—Whether the group presently has other credit union service available;

—The number of persons currently included within the group to be added and their locations;

—The group's proximity to credit union's nearest service facility, and

—Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards, and provide comments on as many of the following factors as are applicable. A credit union need not address every item on the list, simply those issues that are relevant to its particular request:

• Member location—whether the membership is widely dispersed or concentrated in a central location.

• Demographics—the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.

• Market competition—the availability of other financial services.

• Desired services and products—the type of services the group desires in comparison to the type of services a new credit union could offer.

• Sponsor subsidies—the availability of operating subsidies.

• The desire of the sponsor.

• Employee interest—the extent of the employees' interest in obtaining a credit union charter.

• Evidence of past failure—whether the group previously had its own credit union or previously filed for a credit union charter.

• Administrative capacity to provide services—will the group have the management expertise to provide the services requested.

• If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section IV.E of this Chapter; and

• The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

IV.B.4—Corporate Restructuring

If a select group within a federal credit union's field of membership undergoes a substantial restructuring, a change to the credit union's field of membership may be required if the credit union is to continue to provide service to the select group. NCUA permits a multiple common bond credit union to maintain in its field of membership a sold, spun-off, or merged select group to which it has been providing service. This type of amendment to the credit union's charter is not considered an expansion;

therefore, the criteria relating to adding new groups are not applicable.

When two groups merge and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged group, subject to any existing geographic limitation and without regard to any overlap provisions. However, the credit unions cannot serve the other multiple groups that may be in the field of membership of the other credit union.

IV.C—NCUA'S Procedures for Amending the Field of Membership

IV.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

IV.C.2—Regional Director's Decision

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. An expanded field of membership may provide the basis for reversing adverse trends. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's adverse trends. The applicant credit union must clearly establish that the approval of the expanded field of membership meets the requirements of Section IV.B.2 of this Chapter and will not increase the risk to the NCUSIF.

IV.C.3—Regional Director's Approval

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

IV.C.4—Regional Director's Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedure.

IV.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration must address the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. A request for reconsideration will contain new and material evidence. If the request is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of date of the last denial by the regional director. A second request for reconsideration will be treated as an appeal to the NCUA Board.

IV.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of select groups, there are three additional ways a multiple common bond federal credit union can expand its field of membership:

- By taking in the field of membership of another credit union through a merger;
- By taking in the field of membership of another credit union through a purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a spin-off.

IV.D.1—Voluntary Mergers

a. All Select Groups in the Merging Credit Union's Field of Membership Have Less Than 3,000 Primary Potential Members.

A voluntary merger of two or more federal credit unions is permissible as long as each select group in the merging credit union's field of membership has less than 3,000 primary potential members. While the merger requirements outlined in Section 205 of the Federal Credit Union Act must still be met, the requirements of Chapter 2, Section IV.B.2 of this manual are not applicable.

b. One or More Select Groups in the Merging Credit Union's Field of Membership has 3,000 or More Primary Potential Members.

If the merging credit unions serve the same group, and the group consists of 3,000 or more primary potential members, then the ability to form analysis is not required for that group. If the merging credit union has any other groups consisting of 3,000 or more primary potential members, special requirements apply. NCUA will analyze each group of 3,000 or more primary potential members, except as noted above, to determine whether the formation of a separate credit union by such a group is practical. If the formation of a separate credit union by such a group is not practical because the group lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisable criteria outlined in Chapter 1, the group may be merged into a multiple common bond credit union. If the formation of a separate credit union is practical, the group must be spun-off before the merger can be approved.

c. Merger of a Single Common Bond Credit Union Into a Multiple Common Bond Credit Union.

A financially healthy single common bond credit union with a primary potential membership of 3,000 or more cannot merge into a multiple common bond credit union, absent supervisory reasons.

d. Merger Approval.

If the merger is approved, the qualifying groups within the merging credit union's field of membership will be transferred intact to the continuing credit union and can continue to be served.

Where the merging credit union is state chartered, the field of membership rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

IV.D.2—Supervisory Mergers

The NCUA may approve the merger of any federally insured credit union when safety and soundness concerns are present without regard to the 3,000 numerical limitation. The credit union need not be insolvent or in danger of

insolvency for NCUA to use this statutory authority. Examples constituting appropriate reasons for using this authority are: abandonment of the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances.

IV.D.3—Emergency Mergers

An emergency merger may be approved by NCUA without regard to field of membership rules, the 3,000 numerical limitation, or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions including numerical limitation requirements and without changing the character of the continuing federal credit union for future amendments. Under this authority, any single occupational or associational common bond, multiple common bond, or community charter may merger into a multiple common bond credit union and that credit union can continue to serve the merging credit union's field of membership. Subsequent field of membership expansions of the continuing multiple common bond credit union must be consistent with multiple common bond policies.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

IV.D.4—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to field of membership expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency criteria are satisfied. Specified loans, shares, and certain other designated assets and liabilities, without regard to field of membership restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments. Subsequent field of membership expansions must be consistent with multiple common bond policies.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

IV.D.5—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new charter or goes to an existing federal charter.

The request for approval of a spun-off group must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

IV.E—Overlaps

IV.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

Credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an expansion request if the group has 3,000 or more primary potential members. If cases arise where the assurance given to a regional director concerning the unavailability of credit union service is inaccurate, the

misinformation may be grounds for removal of the group from the federal credit union's charter.

When an overlap situation requiring analysis does arise, officials of the expanding credit union must ascertain the views of the overlapped credit union. If the overlapped credit union does not object, the applicant must submit a letter or other documentation to that effect. If the overlapped credit union does not respond, the expanding credit union must notify NCUA in writing of its attempt to obtain the overlapped credit union's comments.

NCUA will approve an overlap if the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union.

In reviewing the overlap, the regional director will consider:

- The view of the overlapped credit union(s);
- Whether the overlap is incidental in nature—the group of persons in question is so small as to have no material effect on the original credit union;
- Whether there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time;
- Whether the original credit union fails to provide requested service;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Generally, if the overlapped credit union does not object, and NCUA determines that there is no safety and soundness problem, the overlap will be permitted.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

NCUA will permit multiple common bond federal credit unions to overlap community charters without performing an overlap analysis.

IV.E.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the field of membership descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of any select group listed in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership through a housekeeping amendment.

Overlaps may occur as a result of restructuring or merger of the parent organization. When such overlaps occur, each credit union must request a field of membership amendment to reflect the new groups each wishes to serve. The credit union can continue to serve any current group in its field of membership that is acquiring a new group or has been acquired by a new group. The new group cannot be served by the credit union until the field of membership amendment is approved by NCUA.

Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership. When two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions. This can be accomplished through a housekeeping amendment.

Credit unions must submit to NCUA documentation explaining the restructuring and provide information regarding the new organizational structure.

IV.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

IV.F—Charter Conversion

A multiple common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A multiple common bond federal credit union may apply to convert to a single occupational or associational common bond charter provided the field of membership requirements of the new charter are met. Groups within the existing charter, which do not qualify in the new charter, cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion.

IV.G—Removal of Groups From the Field of Membership

A credit union may request removal of a group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support;
- The group initiates action to be removed from the field of membership; or
- The federal credit union wishes to convert to a single common bond.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. If the regional director concurs with the request, membership may continue for those who are already members under the ''once a member, always a member'' provision of the Federal Credit Union Act.

IV.H—Other Persons Eligible for Credit Union Membership

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Member of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

V—Community Charter Requirements

V.A.1—General

Community charters must be based on a single, geographically well-defined local community, neighborhood, or rural district where individuals have common interests and/or interact. More than one credit union may serve the same community.

NCUA recognizes four types of affinity on which a community charter can be based—persons who live in, worship in, attend school in, or work in the community. Businesses and other legal entities within the community boundaries may also qualify for membership.

NCUA has established the following requirements for community charters:

- The geographic area's boundaries must be clearly defined;
- The area is a ''well-defined local, community, neighborhood, or rural district;'' and
- Individuals must have common interests and/or interact.

V.A.2—Documentation Requirements

In addition to the documentation requirements set forth in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

A community credit union must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

''Well-defined'' means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or a clearly identifiable neighborhood. Although congressional districts and state boundaries are well-defined areas, they do not meet the requirement that the proposed area be a local community.

The well-defined local community, neighborhood, or rural district requirement is met if:

- The area to be served is in a recognized single political jurisdiction, *i.e.*, a city, county, or its political equivalent, or any contiguous political subdivisions contained therein.

The well-defined local community, neighborhood, or rural district requirement may be met if:

- The area to be served is in multiple contiguous political jurisdictions, *i.e.* a city, county, or its political equivalent, or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 500,000; or
- The area to be served is a Metropolitan Statistical Area (MSA) or its equivalent, or a portion thereof, where the population of the MSA or its equivalent does not exceed 1,000,000.

If the proposed area meets either the multiple political jurisdiction or MSA criteria, the credit union must submit a letter describing how the area meets the standards for community interaction and/or common interests.

If NCUA does not find sufficient evidence of community interaction and/or common interests or if the area to be served does not meet the MSA or multiple political jurisdiction requirements of the preceding paragraph, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district.

It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates interaction or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community, neighborhood, or rural district.

Examples of acceptable documentation may include:

- The defined political jurisdictions;
- Major trade areas (shopping patterns and traffic flows);
- Shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.);
- Organizations and clubs within the community area;
- Newspapers or other periodicals published for and about the area;
- A local map designating the area to be served and locations of current and proposed service facilities and a regional or state map with the proposed community outlined; or
- Other documentation that demonstrates that the area is a community where individuals have common interests and/or interact.

An applicant need not submit a narrative summary or documentation to support a proposed community charter, amendment or conversion as a well-defined local community, neighborhood or rural district if the NCUA has previously determined that the same exact geographic area meets that requirement in connection with consideration of a prior application under IRPS 99–1, as amended. Applicants may contact the appropriate regional office to find out if the area

they are interested in has already been determined to meet the community requirements. If the area is the same as a previously approved area, an applicant need only include a statement to that effect in the application. Applicants may be required to submit their own summary and documentation regarding the community requirements if NCUA has reason to believe that prior submissions are no longer accurate.

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a detailed and practical business and marketing plan for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the unique financial and operational factors of a community charter.

Community credit unions will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and business plan submitted with their application.

V.A.3—Special Documentation Requirements for A Converting Credit Union

An existing federal credit union may apply to convert to a community charter. Groups currently in the credit union's field of membership but outside the new community credit union's boundaries may not be included in the new community charter. Therefore, the credit union is required to notify groups that will be removed from the field of membership as a result of the conversion. Members of record can continue to be served.

The documentation requirements set forth in Section V.A.2 of this Chapter must be met before a community charter can be approved. Demonstrating community support, as discussed in Chapter 1, is not required for converting credit unions. In order to support a case for a conversion to community charter, the applicant federal credit union must develop a business plan incorporating the following data:

- Pro forma financial statements for the first two years after the proposed conversion, including assumptions—*e.g.*, member, share, loan, and asset growth;
- Marketing plan addressing how the community will be served;
- Financial services to be provided to members;
- Location of service facilities; and
- Anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

Before approval of an application to convert to a community credit union, NCUA must be satisfied that the institution will be viable and capable of providing services to its members.

V.A.4—Community Boundaries

The geographic boundaries of a community federal credit union are the areas defined in its charter. The boundaries can be defined using streets, rivers, railroads, etc.

A community that is a recognized legal entity, may be stated in the field of membership—for example, ''Gus Township, Texas'' or ''Kristi County, Virginia.''

A community that is a recognized MSA must state in the field of membership the political jurisdiction(s) that comprise the MSA.

V.A.5—Special Community Charters

A community field of membership may include persons who work or attend school in a particular industrial park, shopping mall, office complex, or similar development. The proposed field of membership must have clearly defined geographic boundaries.

V.A.6—Sample Community Fields of Membership

A community charter does not have to include all four affinities (*i.e.*, live, work, worship, or attend school in a community). Some examples of community fields of membership are:

- Persons who live, work, worship, or attend school in, and businesses located in the area of Johnson City, Tennessee, bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west;
- Persons who live or work in Green County, Maine;
- Persons who live, worship, or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois;
- Persons who live, worship, work, or attend school on the University of Dayton campus, in Dayton, Ohio; or
- Persons who work for businesses located in Clifton Country Mall, in Clifton Park, New York.
- Persons who live, work, or worship in the Binghamton, New York, MSA, consisting of Broome and Tioga Counties, New York.

Some examples of insufficiently defined community field of membership definitions are:

- Persons who live or work within and businesses located within a ten-mile radius of Washington, D.C. (using a radius does not establish a well-defined area); or
- Persons who live or work in the industrial section of New York, New York. (not a well-defined neighborhood, community, or rural district).
- Persons who live or work in the greater Boston area. (not a well-defined neighborhood, community, or rural district).

Some examples of unacceptable local communities, neighborhoods, or rural districts are:

- Persons who live or work in the State of California. (does not meet the definition of local community, neighborhood, or rural district).
- Persons who live in the first congressional district of Florida. (does not meet the definition of local community, neighborhood, or rural district).

V.B—Field of Membership Amendments

A community credit union may amend its field of membership by adding additional affinities or removing exclusionary clauses. This can be accomplished with a housekeeping amendment.

A community credit union also may expand its geographic boundaries. Persons who live, work, worship, or attend school within the proposed well-defined local community, neighborhood or rural district must have common interests or interact. The credit union must follow the requirements of Section V.A.3 of this chapter.

V.C—NCUA Procedures for Amending the Field of Membership

V.C.1—General

All requests for approval to amend a community credit union's charter must be submitted to the appropriate regional director. If a decision cannot be made within a reasonable period of time, the regional director will notify the credit union.

V.C.2—NCUA's Decision

The financial and operational condition of the requesting credit union will be considered in every instance.

The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

V.C.3—NCUA Approval

If the requested amendment is approved by NCUA, the credit union will be issued an amendment to Section 5 of its charter.

V.C.4—NCUA Disapproval

When NCUA disapproves any application to amend the field of membership, in whole or in part, under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

V.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration must address the reasons for the initial denial. The regional director will not consider the request as an appeal, but a request for reconsideration. A request for reconsideration will contain new and material evidence. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the charter amendment is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director. A second request for reconsideration will be treated as an appeal to the NCUA Board.

V.D—Mergers, Purchase and Assumptions, and Spin-Offs

There are three additional ways a community federal credit union can expand its field of membership:

- By taking in the field of membership of another credit union through a merger;
- By taking in the field of membership through a purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a spin-off.

V.D.1—Standard Mergers

Generally, the requirements applicable to field of membership expansions apply to mergers where the continuing credit union is a community federal charter.

Where both credit unions are community charters, the continuing credit union must meet the criteria for expanding the community boundaries. A community credit union cannot merge into a single occupational/associational, or multiple common bond credit union, except in an emergency merger. However, a single occupational or associational, or multiple common bond credit union can merge into a community charter as long as the merging credit union has a service facility within the community boundaries or a majority of the merging credit union's field of membership would qualify for membership in the new community charter. While a community charter may take in an occupational, associational, or multiple common bond credit union in a merger, it will remain a community charter.

Groups within the merging credit union's field of membership located outside of the community boundaries may not continue to be served. The merging credit union must notify groups that will be removed from the field of membership as a result of the merger. However, the credit union may continue to serve members of record.

Where a state credit union is merging into a community federal credit union, the continuing federal credit union's field of membership will be worded in accordance with NCUA policy. Any subsequent field of membership expansions must comply with applicable amendment procedures.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

V.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to field of membership requirements or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record-keeping; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions, including the service facility requirement, without changing the character of the continuing federal credit union for future amendments. Under this authority, a federal credit union may take in any dissimilar field of membership.

Even though the merging credit union is a single common bond credit union or multiple common bond credit union or community credit union, the continuing credit union will remain a community charter. Future community expansions will be based on the

continuing credit union's original community area.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

V.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to community expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most instances, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency criteria are satisfied.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities may also be acquired without regard to field of membership restrictions and without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the P&A does not meet the emergency criteria, then only members of record can be obtained unless they otherwise qualify for membership in the community charter.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

V.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All field of membership requirements apply regardless of whether the spun-off group goes to a new or existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the field of membership requirements are met;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a portion of the community, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

V.E—Overlaps

V.E.1—General

Generally, an overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit community credit unions to overlap any other charters without performing an overlap analysis.

V.E.2—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group or community otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

V.F—Charter Conversions

Although rare, a community federal credit union may convert to a single occupational or associational, or multiple common bond credit union. The converting credit union must meet all occupational, associational, and multiple common bond requirements, as applicable. The converting credit union may continue to serve members of record of the prior field of membership as of the date of the conversion, and any groups or communities obtained in an emergency merger or P&A. A change to the credit union's field of membership and designated common bond will be necessary.

Although rare, a community credit union may convert to serve a new geographical area provided the field of membership requirements of V.A.3 of this chapter are met. Members of record of the original community can continue to be served.

V.G—Other Persons With a Relationship to the Community

A number of persons who have a close relationship to the community may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Volunteers in the community;
- Member of the immediate family or household; and
- Organizations of such persons

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an ''immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

Chapter 3—Low-Income Credit Unions and Credit Unions Serving Underserved Areas

I—Introduction

One of the primary reasons for the creation of federal credit unions is to make credit available to people of modest means for provident and productive purposes. To help NCUA fulfill this mission, the agency has established special operational policies for federal credit unions that serve low-income groups and underserved areas. The policies provide a greater degree of flexibility that will enhance and invigorate capital infusion into low-income groups, low-income communities, and underserved areas. These unique policies are necessary to provide credit unions serving low-income groups with financial stability and potential for controlled growth and to encourage the formation of new charters as well as the delivery of credit union services in low-income communities.

II—Low-Income Credit Union

II.A—Defined

A credit union serving predominantly low-income members may be designated as a low-income credit union. Section 701.34 of NCUA's Rules and Regulations defines the term ''low-income members'' as those members:

- Who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics; or
- Whose annual household income falls at or below 80 percent of the median household income for the nation as established by the Census Bureau.

The term ''low-income members'' also includes members who are full-time or part-time students in a college, university, high school, or vocational school.

To obtain a low-income designation from NCUA, an existing credit union must establish that a majority of its members meet the low-income definition. An existing community credit union that serves a geographic area where a majority of residents meet the annual income standard is presumed to be serving predominantly low-income members.

II.B—Special Programs

A credit union with a low-income designation (except student credit unions) has greater flexibility in accepting non-member deposits insured by the NCUSIF, are exempt from the aggregate loan limit on business loans, and may offer secondary capital accounts to strengthen its capital base. It also may participate in special funding programs such as the Community Development Revolving Loan Program for Credit Unions (CDRLP) if it is involved in the stimulation of economic development and community revitalization efforts.

The CDRLP provides both loans and grants for technical assistance to low-income credit unions. The requirements for participation in the revolving loan program are in Part 705 of the NCUA Rules and Regulations. Only operating credit unions are eligible for participation in this program.

II.C—Low-Income Documentation

A federal credit union charter applicant or existing credit union wishing to receive a low-income designation should forward a separate request for the designation to the regional director, along with appropriate documentation supporting the request.

For community charter applicants, the supporting material should include the median household income or annual wage figures for the community to be served. If this information is unavailable, the applicant should identify the individual zip codes or census tracts that comprise the community and NCUA will assist in obtaining the necessary demographic data.

Similarly, if single occupational or associational or multiple common bond charter applicants cannot supply income data on its potential members, they should provide the regional director with a list which includes the number of potential members, sorted by their residential zip codes, and NCUA will assist in obtaining the necessary demographic data.

An existing credit union can perform a loan or membership survey to determine if the credit union is primarily serving low-income members.

II.D—Third Party Assistance

A low-income federal credit union charter applicant may contract with a third party to assist in the chartering and low-income designation process. If the charter is granted, a low-income credit union may contract with a third party to provide necessary management services. Such contracts should not exceed the duration of one year subject to renewal.

II.E—Special Rules for Low-Income Federal Credit Unions

In recognition of the unique efforts needed to help make credit union service available to low-income groups, NCUA has adopted special rules that pertain to low-income credit union charters, as well as field of membership additions for low-income credit unions. These special rules provide additional latitude to enable underserved, low-income individuals to gain access to credit union service.

NCUA permits credit union chartering and field of membership amendments based on associational groups formed for the sole purpose of making credit union service available to low-income persons. The association must be defined so that all of its members will meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations. Any multiple common bond credit union can add low-income associations to their fields of membership.

A low-income community federal credit union has additional latitude in serving persons who are affiliated with the community. In addition to serving members who live, work, worship, or go to school in the community, a low-income community federal credit union may also serve persons who perform volunteer services, participate in programs to alleviate poverty or distress, or who participate in associations headquartered in the community.

Examples of a low-income community and an associational-based low-income federal credit union are as follows:

- Persons who live in [the target area]; persons who regularly work, worship, attend school, perform volunteer services, or participate in associations headquartered in [the target area]; persons participating in programs to alleviate poverty or distress which are located in [the target area]; incorporated and unincorporated organizations located in [the target area] or maintaining a facility in [the target area]; and organizations of such persons.
- Members of the Canarsie Economic Assistance League, in Brooklyn, NY, an association whose members all meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations.

III—Service to Underserved Communities

III.A—General

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition of underserved areas in the Federal Credit Union Act. Adding an underserved area will not change the charter type of a federal credit union. More than one federal credit union can serve the same underserved area. The Federal Credit Union Act defines an underserved area as a local community, neighborhood, or rural district that is an ''investment area'' as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

For an underserved area, the well-defined local community, neighborhood, or rural district requirement is met if:

- The area to be served is in a recognized single political jurisdiction, *i.e.,* a city, county, or its political equivalent, or any contiguous political subdivisions contained therein;
- The area to be served is in multiple contiguous political jurisdictions, *i.e.* a city, county, or its political equivalent, or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 500,000; or
- The area to be served is located in a Metropolitan Statistical Area (MSA) or its equivalent where the population of the MSA or its equivalent does not exceed 1,000,000.

If the area to be served does not meet the MSA or multiple political jurisdiction requirements outlined above, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district.

For an underserved area, an investment area includes any of the following (as reported in the most recently completed decennial census or equivalent government data):

- An area encompassed or located in an Empowerment Zone or Enterprise Community designated under section 1391 or the Internal Revenue Code of 1996 (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;
- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater
- An area where the unemployment rate is at least 1.5 times the national average;
- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;
- An area located outside of a Metropolitan Area with a county population loss between the most recent decennial census and the previous decennial census of at least 10 percent;
- An area located outside of a Metropolitan Area with a county net migration loss (out-migration minus in-migration) over the five-year period preceding the most recent decennial census of at least 5 percent;
- An area meeting the criteria for economic distress that may be established by the Community Development Financial Institutions Fund (CDFI) of the United States Department of the Treasury.

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

If a credit union has a preexisting office within close proximity to the underserved area, then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan, to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the underserved area are being met as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

IV—Appeal Procedures for Underserved Areas

IV.A—NCUA Approval

If the requested underserved area is approved by NCUA, the credit union will be issued an amendment to Section 5 of its charter.

IV.B—NCUA Disapproval

When NCUA disapproves any application to add an underserved area, in whole or in part, under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

IV.C—Appeal of Regional Director Decision

If the regional director denies an underserved area request, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration must address the reasons for the initial denial. The request will not be considered as an appeal, but a request for reconsideration by the regional director. A request for reconsideration will contain new and material evidence. The regional director will have 30 days from the date of the

receipt of the request for reconsideration to make a final decision. If the charter amendment is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director. A second request for reconsideration will be treated as an appeal to the NCUA Board.

Chapter 4—Charter Conversions

I—Introduction

A charter conversion is a change in the jurisdictional authority under which a credit union operates.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation.

State-chartered credit unions are incorporated in a particular state, receiving their charter from the state agency responsible for credit unions and subject to the state's regulator. If the state-chartered credit union's deposits are federally insured it will also fall under NCUA's jurisdiction.

A federal credit union's power and authority are derived from the Federal Credit Union Act and NCUA Rules and Regulations. State-chartered credit unions are governed by state law and regulation. Certain federal laws and regulations also apply to federally insured state chartered credit unions.

There are two types of charter conversions: federal charter to state charter and state charter to federal charter. Common bond and community requirements are not an issue from NCUA's standpoint in the case of a federal to state charter conversion. The procedures and forms relevant to both types of charter conversion are included in Appendix D.

II—Conversion of a State Credit Union to a Federal Credit Union

II.A—General Requirements

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so it must:

- Comply with state law regarding conversion and file proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate, and other documents with NCUA;
- comply with the requirements of the Federal Credit Union Act, *e.g.*, chartering and reserve requirements; and
- be granted federal share insurance by NCUA.

Conversions are treated the same as any initial application for a federal charter, including an on-site examination by NCUA where appropriate. NCUA will also consult with the appropriate state authority regarding the credit union's current financial condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter applicant.

A converting state credit union's field of membership must conform to NCUA's chartering policy. The field of membership will be phrased in accordance with NCUA chartering policy. However, if the converting credit union is a multiple group charter and the new federal charter is a multiple group, then the new federal charter may retain in its field of membership any group that the state credit union was serving at the time of conversion. Subsequent changes must conform to NCUA chartering policy in effect at that time. The converting credit union may continue to serve members of record. The converting credit union may retain in its field of membership any group or community added pursuant to state emergency provisions.

If the converting credit union is a community charter and the new federal charter is community-based, it must meet the community field of membership requirements set forth in Chapter 2, Section V. If the state chartered credit union's community boundary is more expansive than the approved federal boundary, only members of record outside of the new community boundary may continue to be served.

II.B—Submission of Conversion Proposal to NCUA

The following documents must be submitted with the conversion proposal:

- Conversion of State Charter to Federal Charter (NCUA 4000);
- Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section of page 4 should be completed and, where applicable, signed by the credit union officials.
- Report of Officials and Agreement to Serve (NCUA 4012);
- The Application to Convert From State Credit Union to Federal Credit Union (NCUA 4401);
- The Application and Agreements for Insurance of Accounts (NCUA 9500);
- Certification of Resolution (NCUA 9501);
- Written evidence of state regulator approval; and
- Business plan, as appropriate, including the most current financial report and delinquent loan schedule.

If the state charter is applying to become a federal community charter, it must also comply with the documentation requirements included in Chapter 2, Sections V.A.2.

II.C—NCUA Consideration of Application to Convert

II.C.1—Review by the Regional Director

The application will be reviewed to determine that it is complete and that the proposal is in compliance with Section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The regional director may make further investigation into the proposal and may require the submission of additional information to support the request to convert.

II.C.2—On-Site Review

NCUA may conduct an on-site examination of the books and records of the credit union. Non-federally insured credit unions will be assessed an insurance application fee.

II.C.3—Approval by the Regional Director and Conditions to the Approval

The conversion will be approved by the regional director if it is in compliance with Section 125 of the Federal Credit Union Act and meets the criteria for federal insurance. Where applicable, the regional director will specify any special conditions that the credit union must meet in order to convert to a federal charter, including changes to the credit union's field of membership in order to conform to NCUA's chartering policies. Some of these conditions may be set forth in a Letter of Understanding and Agreement (LUA), which requires the signature of the officials and the regional director.

II.C.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the conversion.

II.C.5—NCUA Disapproval

When NCUA disapproves any application to convert to a federal charter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

II.C.6—Appeal of Regional Director Decision

If a conversion to a federal charter is denied by the regional director, the applicant credit union may appeal the

decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

II.D—Action by Board of Directors

II.D.1—General

Upon being informed of the regional director's preliminary approval, the board must:

- Comply with all requirements of the state regulator that will enable the credit union to convert to a federal charter and cease being a state credit union;
- Obtain a letter or official statement from the state regulator certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a federal charter. A copy of this document must be submitted to the regional director;
- Obtain a letter from the private share insurer (includes excess share insurers), if applicable, certifying that the credit union has met all withdrawal requirements. A copy of this document must be submitted to the regional director; and
- Submit a statement of the action taken to comply with any conditions imposed by the regional director in the preliminary approval of the conversion proposal and, if applicable, submit the signed LUA.

II.D.2—Application for a Federal Charter

When the regional director has received evidence that the board of directors has satisfactorily completed the actions described above, the federal charter and new Certificate of Insurance will be issued.

The credit union may then complete the conversion as discussed in the following section. A denial of a conversion application can be appealed. Refer to Section II.C.6 of this chapter.

II.E—Completion of the Conversion

II.E.1—Effective Date of Conversion

The date on which the regional director approves the Organization Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a federal credit union. The regional director will notify the credit union and the state regulator of the date of the conversion.

II.E.2—Assumption of Assets and Liabilities

As of the effective date of the conversion, the federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

II.E.3—Board of Directors' Meeting

Upon receipt of its federal charter, the board will hold its first meeting as a federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA Rules and Regulations.

As of the commencement of operations, the accounting system, records, and forms must conform to the standards established by NCUA.

II.E.4—Credit Union's Name

Changing of the credit union's name on all signage, records, accounts, investments, and other documents should be accomplished as soon as possible after conversion. The credit union has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of ''state credit union'' stationery immediately, and discontinue using credit cards, ATM cards, etc. within 180 days after the effective date of the conversion, or the reissue date—whichever is later. The regional director has the discretion to extend the timeframe for an additional 180 days. Member share drafts with the state chartered name can be used by the member until depleted.

II.E.5— Reports to NCUA

Within 10 business days after commencement of operations, the recently converted federal credit union must submit to the regional director the following:

- Report of Officials (NCUA 4501); and
- Financial and Statistical Reports, as of the commencement of business of the federal credit union.

III—Conversion of a Federal Credit Union to a State Credit Union

III.A—General Requirements

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

- Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;
- Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and
- Comply with applicable state law and the requirements of the state regulator.

It is important that the credit union provide an accurate disclosure of the reasons for the conversion. These reasons should be stated in specific terms, not as generalities. The federal credit union converting to a state charter remains responsible for the entire operating fee for the year in which it converts.

III.B—Special Provisions Regarding Federal Share Insurance

If the federal credit union intends to continue federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (NCUA 9600) to the regional director at the time it requests approval of the conversion proposal. The regional director has the authority to approve or disapprove the application.

If the converting federal credit union does not intend to continue federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of Section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the federal credit union will be terminating its federal share insurance or converting from federal to non-federal share insurance, it must comply with the membership notice and voting procedures set forth in Section 206 of the Federal Credit Union Act and Part 708 of NCUA's Rules and Regulations, and address the criteria set forth in Section 205(c) of the Federal Credit Union Act.

Where the state credit union will be non-federally insured, federal insurance ceases on the effective date of the charter conversion. If it will be otherwise uninsured, then federal

insurance will cease one year after the date of conversion subject to the restrictions in Section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the federal credit union's NCUSIF capitalization deposit after the final date on which any of its shares are federally insured.

The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

III.C—Submission of Conversion Proposal to NCUA

Upon approval of a proposition for conversion by a majority vote of the board of directors at a meeting held in accordance with the federal credit union's bylaws, the conversion proposal will be submitted to the regional director and will include:

- A current financial report;
- A current delinquent loan schedule;
- An explanation and appropriate documents relative to any changes in insurance of member accounts;
- A resolution of the board of directors;
- A proposed Notice of Special Meeting of the Members (NCUA 4221);
- A copy of the ballot to be sent to all members (NCUA 4506);
- Evidence that the state regulator is in agreement with the conversion proposal; and
- A statement of reasons supporting the request to convert.

III.D—Approval of Proposal To Convert

III.D.1—Review by the Regional Director

The proposal will be reviewed to determine that it is complete and is in compliance with Section 125 of the Federal Credit Union Act. The regional director may make further investigation into the proposal and require the submission of additional information to support the request.

III.D.2—Conditions to the Approval

The regional director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

III.D.3—Approval by the Regional Director

The proposal will be approved by the regional director if it is in compliance with Section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of Section 206 of the Federal Credit Union Act.

III.D.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the proposal.

III.D.5—NCUA Disapproval

When NCUA disapproves any application to convert to a state charter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

III.D.6—Appeal of Regional Director Decision

If the regional director denies a conversion to a state charter, the applicant credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

III.E—Approval of Proposal by Members

The members may not vote on the proposal until it is approved by the regional director. Once approval of the proposal is received, the following actions will be taken by the board of directors:

- The proposal must be submitted to the members for approval and a date set for a meeting to vote on the proposal. The proposal may be acted on at the annual meeting or at a special meeting for that purpose. The members must also be given the opportunity to vote by written ballot to be filed by the date set for the meeting.
- Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted. The notice must:

—Specify the purpose, time and place of the meeting;

—Include a brief, complete, and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;

—Specify the costs of the conversion, i.e., changing the credit union's name, examination and operating fees, attorney and consulting fees, tax liability, etc.;

—Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;

—Be accompanied by a Ballot for Conversion Proposal (NCUA 4506); and

—State in bold face type that the issue will be decided by a majority of members who vote.

- The proposed conversion must be approved by a majority of all of the members who vote on the proposal, a quorum being present, in order for the credit union to proceed further with the proposition, provided federal insurance is maintained. If the proposed state chartered credit union will not be federally insured, 20 percent of the total membership must participate in the voting, and of those, a majority must vote in favor of the proposal. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with instructions above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.
- The board of directors shall, within 10 days, certify the results of the membership vote to the regional director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on NCUA 4505.

III.F—Compliance With State Laws

If the proposal for conversion is approved by a majority of all members who voted, the board of directors will:

- Ensure that all requirements of state law and the state regulator have been accommodated;
- Ensure that the state charter or the license has been received within 90 days from the date the members approved the proposal to convert; and
- Ensure that the regional director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the regional director should be informed of the reasons for the delay. The regional director may set a new date for the conversion to be completed.

III.G—Completion of Conversion

In order for the conversion to be completed, the following steps are necessary:

- The board of directors will submit a copy of the state charter to the regional director within 10 days of its receipt. This will be accompanied by the federal charter and the federal insurance certificate. A copy of the financial reports as of the preceding month-end should be submitted at this time.
- The regional director will notify the credit union and the state regulator in writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.
- The credit union shall cease to be a federal credit union as of the effective date of the state charter.
- If the regional director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state regulator shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the regional director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be effective and completed until the improper actions and steps have been corrected.
- Upon ceasing to be a federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state regulator.
- If the regional director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the federal charter will be canceled.
- There is no federal requirement for closing the records of the federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter. The converting credit union is advised to contact the state regulator for applicable state requirements.
- The credit union shall neither use the words ''Federal Credit Union'' in its name nor represent itself in any manner as being a federal credit union.
- Changing of the credit union's name on all signage, records, accounts, investments, and other documents should be accomplished as soon as possible after conversion. Unless it violates state law, the credit union has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of ''federal credit union'' stationery immediately, and discontinue using credit cards, ATM cards, etc. within 180 days after the effective date of the conversion, or the reissue date—whichever is later. The regional director has the discretion to extend the timeframe for an additional 180 days. Member share drafts with the federal chartered name can be used by the member until depleted. If the state credit union is not federally insured, it must change its name and must immediately cease using any credit union documents referencing federal insurance.
- If the state credit union is to be federally insured, the regional director will issue a new insurance certificate.

BILLING CODE 7535–01–P

APPENDIX A

GLOSSARY

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA Rules and Regulations, as well as state laws, may be used for further reference.

Adequately capitalized - A credit union is considered adequately capitalized when it has a net worth ratio of at least 6 percent. A multiple common bond credit union must be adequately capitalized in order to add new groups to its charter. The regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level.

Affinity - A relationship upon which a community charter is based. Acceptable affinities include living, working, worshiping, or attending school in a community.

Appeal - The right of a credit union or charter applicant to request a formal review of a regional director's adverse decision by the National Credit Union Administration Board.

Associational common bond - A common bond comprised of members and employees of a recognized association. It includes individuals (natural persons) and/or groups (non natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.

Business plan - Plan submitted by a charter applicant or existing federal credit union addressing the economic advisability of a proposed charter or field of membership addition.

Charter - The document which authorizes a group to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

Common bond - The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are two common bonds which can serve as a basis for a group forming a federal credit union or being included in an existing federal credit union's field of membership: occupational - employment by the same company, - related companies or in a trade,

industry, or profession (TIP); and associational - membership in the same association.

Community credit union - A credit union whose field of membership consists of persons who live, work, worship, or attend school in the same well-defined local community, neighborhood, or rural district.

Credit union - A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services.

Economic advisability - An overall evaluation of the credit union's or charter applicant's ability to operate successfully.

Emergency merger - Pursuant to Section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to common bond policy.

Exclusionary clause - A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group which otherwise could be included in its field of membership.

Federal share insurance - Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

Field of membership - The persons (including organizations and other legal entities) a credit union is permitted to accept for membership.

Household - Persons living in the same residence maintaining a single economic unit.

Housekeeping Amendment - A field of membership amendment to delete groups, change group names, change group locations, remove exclusionary clauses, and to add other persons eligible for credit union membership by virtue of their close relationship to a common bond group or the community for community charters.

Immediate family member - A spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Letter of Understanding and Agreement - Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants for a limited time.

Mentor - An individual who provides guidance and assistance to newly chartered, small, or low-income credit unions. All new federal credit unions are encouraged to establish a mentor relationship with a trained, experienced credit union individual or an existing credit union.

Metropolitan Statistical Area (MSA) - The Office of Management and Budget defines a metropolitan statistical area as an urbanized area that has at least one urbanized area in excess of 50,000 and "comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting."

Merger - Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the appropriate state regulator whenever a state credit union is involved.

Multiple common bond credit union - A credit union whose field of membership consists of more than one group, each of which has a common bond of occupation or association.

Occupational common bond - Employment by the same entity or related entities or a Trade, Industry, or Profession.

Once a member, always a member - A provision of the Federal Credit Union Act which permits an individual to remain a member of the credit union until he or she chooses to withdraw or is expelled from the membership of the credit union. Under this provision, leaving a group that is named in the credit union's charter does not terminate an individual's membership in the credit union.

Organizations of such persons - An organization or organizations composed exclusively of persons who are within the field of membership of the credit union.

Overlap - The situation which results when a group is eligible for membership in more than one credit union.

Primary potential members - Members or employees who belong to an associational or occupational group.

Purchase and assumption - Purchase of all or part of the assets of and assumption of all or part of the liabilities of one credit union by another credit union. The purchased and assumed credit union must first be placed into involuntary liquidation.

Service area - The area that can reasonably be served by the service facilities accessible to the groups within the field of membership.

Service facility - A place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch network that a credit union has an ownership interest in. A service facility does not include an

ATM for purposes of serving an underserved area.

Single associational common bond credit union - A credit union whose field of membership includes members and employees of a recognized association.

Single common bond credit union - A credit union whose field of membership consists of one group which has a common bond of occupation or association.

Single occupational common bond credit union - A credit union whose field of membership consists of employees of the same entity or related entities

Spin-off - The transfer of a portion of the field of membership, assets, liabilities, shares, and capital of one credit union to a new or existing credit union.

Subscribers - For a federal credit union, at least seven individuals who sign the charter application and pledge at least one share.

Trade, Industry, or Profession (TIP) - A single occupational common bond credit union based on employment in a trade, industry, or profession including employment at any number of corporations or other legal entities that while not under common ownership – have a common bond by virtue of producing similar products or providing similar services.

Underserved community - A local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. The area must also be underserved based on other NCUA and federal banking agency data.

Unsafe or unsound practice - Any action, or lack of action, which would result in an abnormal risk or loss to the credit union, its members, or the National Credit Union Share Insurance Fund.

APPENDIX B

LETTER OF UNDERSTANDING AND AGREEMENT

To the Board of Directors and Other Officials
_____ Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly chartered credit unions do not generally have sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements, Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the making of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization (CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner financial and statistical reports as required by the Federal Credit Union Act and Bylaws by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

We, the undersigned officials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the

credit union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

Dated this _____ (day) of _____ (month) _____ (year).

NATIONAL CREDIT UNION ADMINISTRATION BOARD
ON BEHALF OF THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

_____
Regional Director

_____ Federal Credit Union

By:

_____
Chief Executive Officer Date

_____
Chief Financial Officer Date

_____
Secretary Date

APPENDIX C

NCUA OFFICES

CENTRAL OFFICE

1775 Duke Street
Alexandria, VA 22314-3428

Commercial: 703-518-6300

REGION I - Albany

9 Washington Square
Washington Avenue Extension
Albany, NY 12205-5512

Commercial: 518-862-7400
FAX: 518-862-7420

Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont

REGION II - Capital

1775 Duke Street, Suite 4206
Alexandria, VA 22314-3437

Commercial: 703-519-4600
FAX: 703-519-4620

Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia

REGION III - Atlanta

7000 Central Parkway, Suite 1600
Atlanta, GA 30328-4598

Commercial: 678-443-3000
FAX: 678-443-3020

Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands

REGION IV - Chicago

4225 Naperville Road, Suite 125
Lisle, IL 60532-3658

Commercial: 630-955-4100
FAX: 630-955-4120

Illinois, Indiana, Michigan, Missouri, Ohio, Wisconsin, West Virginia

REGION V - AUSTIN

4807 Spicewood Springs Road, Suite 5200
Austin, TX 78759-8490

Commercial:	512-342-5600
FAX:	512-342-5620

Arizona	Colorado
Iowa	Kansas
Minnesota	Nebraska
New Mexico	North Dakota
Oklahoma	South Dakota
Texas	

REGION VI - Pacific

2300 Clayton Road, Suite 1350
Concord, CA 94520-2407

Commercial:	925-363-6200
FAX:	925-363-6220

Alaska	California
Guam	Hawaii
Idaho	Montana
Nevada	Oregon
Utah	Washington
Wyoming	

APPENDIX D

NCUA FORMS

Form Number	Form Title
NCUA 4000	Conversion of State Charter to a Federal Charter -- FCU Investigation Report
NCUA 4001	FCU Investigation Report
NCUA 4008	Charter
NCUA 4009	Approval of Organization Certificate & Certification of Insurance
NCUA 4012	Report of Official & Agreement to Serve
NCUA 4015	Application for Field of Membership Amendment
NCUA 4015-EZ	Application for Field of Membership Amendment (use for all single common bond expansions and multiple common bond expansions of less than 3,000)
NCUA 4221	Notice of Meeting of Members
NCUA 4401	Application to Convert from a State Credit Union to an FCU
NCUA 4505	Affidavit
NCUA 4506	Ballot for Conversion Proposal
NCUA 9500	Application and Agreement for Insurance of Accounts
NCUA 9501	Certification of Resolutions
NCUA 9600	Information to be Provided in Support of the Application of a State Credit Union for Insurance of Accounts

CONVERSION OF STATE CHARTER TO FEDERAL CHARTER

FEDERAL CREDIT UNION INVESTIGATION REPORT

This report must be filled in completely and submitted with the other completed forms listed in Chapter 4 and in the instructions for this form.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed Name: _____ Federal Credit Union
Second Choice of Name: _____ Federal Credit Union

2. Contact Person _____ Bus. Tel. No./Area Code: _____
Res. Tel. No./Area Code: _____

3. The credit union will maintain its office at:

_____	_____	_____	_____
(City)	(County)	(State)	(Zip)

4. Permanent mailing address of credit union: _____
_____
_____

5. Define proposed field of membership (Attach a copy of current state charter field of membership): _____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

6. The board will have (an odd number 5 to 15) _____ members: the credit committee (an odd number, 3 to 7) _____ members: the supervisory committee (3 to 5) _____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

7. Type or print the list of the subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the Organization Certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name:	***Address***:
Occupation:	***Years of Membership***:
Name:	***Address***:
Occupation:	***Years of Membership***:
Name:	***Address***:
Occupation:	***Years of Membership***:
Name:	***Address***:
Occupation:	***Years of Membership***:
Name:	***Address***:
Occupation:	***Years of Membership***:
Name:	***Address***:
Occupation:	***Years of Membership***:
Name:	***Address***:
Occupation:	***Years of Membership***:
Name:	***Address***:
Occupation:	***Years of Membership***:
Name:	***Address***:
Occupation:	***Years of Membership***:
Name:	***Address***:
Occupation:	***Years of Membership***:

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of his/her knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.
Signature _____, Organizer
Organizer's Address: _____
_____
_____

FORM 4000 INSTRUCTIONS

A. INFORMATION FOR CHARTERS AND BYLAWS

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 5. The principle office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the "*Chartering and Field of Membership Manual*."

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and address of the subscribers should be recorded legibly and completely in item 7 of this report. It is from this information that the Administration prepares Section 3 of the charter. The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

C. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Application to Convert, NCUA 4401 – one original;

2. Written evidence regarding whether the state regulator is in agreement with the conversion proposal;

3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;

4. Certificate of Resolution, NCUA 9501 - one original;

5. Organization Certificate, NCUA 4008-one notarized original. At least seven, *but no more than ten persons*, must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;

6. Report of Official and Agreement to Serve, NCUA 4012 – one original for each board member, credit committee member, and supervisory committee member;

7. Most current financial report and delinquent loan schedule; and

8. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

This form must be filled in completely and submitted with the other completed forms listed on page 8 under "Submittal of Charter Application." Please refer to page 7 for instructions in completing this report.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name: _____ Federal Credit Union
   Second choice: _____ Federal Credit Union

2. Contact Person: _____
   Business Tel.: _____
   Residence Tel.: _____
   Address: _____
   _____
   _____

3. The credit union will maintain its offices at:

   _____
   (City, State, County, Zip Code)

3a. Proposed permanent mailing address of credit union:

   _____
   _____
   _____

4. Define proposed field of membership: _____
_____
_____
_____
_____
_____
_____
_____
_____

5. The board will have (an odd number, 5 to 15) _____members; the credit committee will have (an odd number, 3 to 7) _____members; the supervisory committee will have (3 to 5) _____members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

(Attach a separate sheet if space available is not adequate.)

GENERAL INFORMATION

1. Potential membership: _____

   NOTE: Number of employees for occupational, active members for associational (or families for religious groups), or population per most recent census for community-type fields of membership.

2. Potential interest (survey results).

   NOTE: Sample must consist of a minimum of 250 potential members. Copy of survey form(s) utilized should be attached.

   Number of people surveyed: _____
   Number of people responding to survey: _____
   Number of people pledging an initial deposit: _____
   Total dollars pledged: $_____
   Number pledging systematic savings: _____
   Total dollars pledged (per month): $_____

3. Number of persons attending the charter-organization meeting: _____

4. Are officials of the sponsor favorable toward the proposal to organize a credit union? _____

   NOTE: Attach letters of support from company officials (occupational-type); association officials (associational-type); business, civic, or other community organizations (community-type).

5. What facilities and assistance, if any, will the sponsor provide?
   _____Office Space (Describe) _____
   _____Office Supplies
   _____Payroll deductions
   _____Funding for start-up costs, if so $_____
   _____Other (Describe) _____
   _____
   _____
   _____

6. What potential difficulties do you detect in the elected officials carrying out their management responsibilities or in the FCU achieving its stated objectives?

_____

_____

_____

_____

NOTE: The officials' projected goals for share growth must be recorded in the business plan.

7. What provisions have been made to overcome potential difficulties?

_____

_____

_____

_____

Dates of planned contacts by organizer to determine progress and to assist the group:

(Date) **(Date)** **(Date)**

SPECIFIC INFORMATION - OCCUPATIONAL (same company) CHARTER APPLICANTS

1 How long has the sponsor company been in existence? _____

2. What was the highest number of employees during the past three years? _____ Lowest number during the past three years? _____ If a large variance, please explain. _____

3. Are there any contemplated changes in the corporate structure of the company? _____ If yes, explain. _____

4. Have there been any significant changes in the corporate structure in the past three years? _____ If yes, please explain. _____

5. Are there any negotiations now in progress between management and labor that could lead to work stoppages? _____ If yes, please explain. _____

6. If the credit union cannot operate on the employer's property, explain how the credit union will be able to transact business effectively with the members. _____

7. If the employees to be served by the credit union work in more than one location or city, identify each location with the corresponding number of employees working at each. _____

_____

_____

_____

_____

8. Are there other employees of the company who are not being included in the proposed field of membership? _____ **If so, give the number and location of the other employees and explain why they are not included in the proposed credit union's field of membership.** _____

_____

_____

_____

_____

SPECIFIC INFORMATION - OCCUPATIONAL (trade, industry or profession) CHARTER APPLICANTS

1. Explain how the credit union will be able to transact business effectively with the members. _____

SPECIFIC INFORMATION - ASSOCIATIONAL CHARTER APPLICANTS

1. State the purpose and goals of the organization sponsoring this charter.

2. List the types of activities and their frequency, which the organization sponsors that provide contact among the members and from which common loyalties, mutual benefits, and mutual interests are developed. _____

3. In what year was the organization established? _____ Is it incorporated? _____ Where is the headquarters located? _____

4. Give statistics as to trends in membership during the last five years. _____

5. What is the frequency of members' meetings? _____ Average attendance: _____ Dues required: _____

6. State the geographic territory where members reside. _____

7. Submit a copy of the current bylaws of the association, the constitution or articles of incorporation, and recent financial statements, i.e. balance sheet, and income and expense statement, with this application.

8. If the bylaws, constitution or articles of incorporation provide for more than one type of membership and if all classes of membership are to be included in the credit union's field of membership, provide justification for the inclusion of other than "regular" members. _____

_____

_____

_____

_____

9. For labor union group only, complete a through c:

a. State the number of labor union members at each place of employment.

_____

_____

_____

b. State the total number of employees, whether union members or not, working at each place of employment. Give a breakdown of union versus nonunion employees. _____

_____

_____

_____

c. What has been done towards organizing a credit union on an employee basis? Discuss fully. _____

_____

_____

_____

_____

SPECIFIC INFORMATION – MULTIPLE COMMON BOND CHARTER APPLICANTS

1. Explain how the credit union will be able to transact business effectively with the members. _____

SPECIFIC INFORMATION - COMMUNITY CHARTER APPLICANTS

1. Community charters must be based on a well-defined local community, neighborhood, or rural district where individuals have common interests and/or interact. Describe how the proposed community area meets these requirements.

NOTE: Please refer to Chapter 2, Section IV of the "*Chartering and Field of Membership Manual*" when answering this question.

2. Which business, civic, or other community organizations support the proposed credit union? List and show the support pledged including the names and titles of officials who were contacted. Obtain and attach letters of support from these individuals. _____

3. Describe the proposed area's specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly definable neighborhood. _____

4. Provide a map which clearly outlines the credit union's proposed community boundaries and identify proposed service facilities.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

1. List of subscribers who have signed the Organization Certificate (7 not more than 10 persons). Names should be IDENTICAL to signature on the Organization Certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

2. Are all of the subscribers within the field of membership? _____ Do they appear to be representative of the group described in the definition of the field of membership? _____ If not, explain. _____

3. Does your investigation indicate that the subscribers are persons of good character? _____ If not, explain. _____

4. From your investigation, is it your judgment that the directors and committee members are persons of good character, and that they have the ability and determination to operate a credit union satisfactorily? _____ If not, explain. _____

5. Does it appear that there are any factions within the group which may render smooth and efficient credit union operations difficult? _____ If so, explain. _____

_____

_____

6. Is there any indication that the proposed credit union would be used for selfish gain by any person or group of persons within the group to be served?_____

_____

_____

_____

_____

7. Is an application for a State Charter now pending? _____

8. Has the group ever had a credit union? _____ If so, when did it liquidate or merge? _____

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of their knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.

Signature: _____, Organizer
Organizer's Address: _____
_____
_____

Telephone No.: _____ Date: _____

FORM 4001 INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, Item 1 provides space for a second choice.

The territory of operations of a Federal Credit Union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the "*Chartering and Field of Membership Manual.*"

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

This section of the report contains information on:

1. The size and compactness of the group;

2. The nature of the common bond;

3. The attitude of the:

   a. Management of the sponsor organization (if occupational based field of membership);

b. Officers of the sponsor association (if associational based field of membership);

c. Community leaders and/or *officers* of prominent associations or organizations in the area to be served (if community based field of membership);

4. The facilities available for credit union operations;

5. The availability of existing credit union service, and

6. Other facts to support a potential for successful operation.

This section of the report should contain information on the management, association or civic leaders contacted that intend to support or utilize the credit union. In those cases where certain persons in the area are opposed to the credit union, the organizer should point out the factors which indicate that the group will be able to overcome this handicap.

Clerical assistance at least during the first few months of operation, payroll deductions, and office space are desirable aids in the development of a credit union. Plans for overcoming any obstacles to effective operation such as lack of office space or scattered field of membership should be described briefly. If more space is needed than that provided, a separate sheet may be used.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item C. 1. of this report. It is from this information that the National Credit Union Administration prepares Section 3 of the charter. The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

D. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008-one notarized original. At least seven, *but no more than ten persons*, must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;

2. Report of Official and Agreement to Serve, NCUA 4012 – one original for each board member, credit committee member, and supervisory committee member;

3. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan;

4. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original; and

5. Certificate of Resolution, NCUA 9501 - one original.

NATIONAL CREDIT UNION ADMINISTRATION

_____ FEDERAL CREDIT UNION

(A corporation chartered under
the laws of the United States)

CHARTER NO. _____

NCUA 4008
PAGE 1

ORGANIZATION CERTIFICATE

_____ FEDERAL CREDIT UNION

Charter No. _____

TO NATIONAL CREDIT UNION ADMINISTRATION:

We, the undersigned, do hereby associate ourselves as a Federal Credit Union for the purposes indicated in and in accordance with the provisions of the Federal Credit Union Act, (12 U.S.C. 1751 et seq.). We hereby request approval of this organization certificate; we hereby apply for insurance of member accounts; we agree to comply with the requirements of said Act, with the terms of this organization certificate and with all laws, rules, and regulations now or hereafter applicable to Federal Credit Unions.

(1) The name of this credit union shall be _____ Federal Credit Union.

(2) This credit union will maintain its office and will operate in the territory described in the field of membership.

(3) The names and addresses of the subscribers to this certificate and the number of shares subscribed by each are as follows:

NAME	ADDRESS	SHARES

(4) The par value of the shares of this credit union will be stated in the bylaws.

(5) The field of membership shall be limited to those having the following common bond:_____

(6) The term of this credit union's existence shall be perpetual: Provided, however, that upon the finding that this credit union is bankrupt or insolvent or has violated any provision of this organization certificate, of the bylaws, of the Federal Credit Union Act including any amendments thereto or thereof, or of any regulations issued thereunder, this organization certificate may be suspended or revoked under the provisions of Section 120 (b) of the Federal Credit Union Act.

(7) This certificate is made to enable the undersigned to avail themselves of the advantages of said Act.

(8) The management of this credit union, the conduct of its affairs, and the powers, duties, and privileges of its directors, officers, committees and membership shall be set forth in the approved bylaws and any approved amendments thereto or thereof.

IN WITNESS THEREOF we[1] have here unto subscribed our names this

_____ _____ _____
(day) (month) (year)

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Subscribed before me, an officer competent to

administer oaths, at _____
CITY/STATE

this _____ _____ _____
(day) (month) (year)

Signed _____

Title _____
(Notary public or other competent officer)

1 At least seven signers none of whom should administer the oath

APPROVAL OF ORGANIZATION CERTIFICATE AND CERTIFICATION OF INSURANCE

Pursuant to the provisions of the Federal Credit Union Act (12 U.S.C. 1751 et. Seq.), the foregoing organization certificate and insurance of member accounts of _____ Federal Credit Union are approved this

_____ _____ _____
(day) (month) (year)

_____
CHAIRMAN
NATIONAL CREDIT UNION ADMINISTRATION

REPORT OF OFFICIAL AND AGREEMENT TO SERVE

TO: **NATIONAL CREDIT UNION ADMINISTRATION**

Proposed _____ Federal Credit Union
Title of Newly
Elected/Appointed Credit Union

Name:_____ Position: _____
Mr./Ms./Mrs./Miss Last, First, Middle

Maiden Name (If Different From Above): _____

Address (Res.): _____
Street City, State, Zip Code

Phone + Area Code: _____

Place of Birth: _____ Date of Birth: _____

Employer: _____Social Security Number: _____

Type of Business: _____

Number of years with present employer: _____ Your position title: _____

Education background (enter highest grade completed)
High School:_____College: _____ Major Field of Study: _____

Other training or experience: _____
_____
_____
_____

Are you willing to accept the position of trust for which you have been selected and to remain in office until a qualified successor is found? ___ YES ___ NO

Have you been informed as to the general duties and responsibilities of an official of the proposed Federal Credit Union and are you willing to devote the time necessary to familiarize yourself with and to perform your duties? ___ YES ___ NO

Estimated number of hours per month you will be able to donate as a volunteer: _____

IF THE ANSWER IS **YES** TO THE FOLLOWING QUESTION, PLEASE PROVIDE INFORMATION AS INSTRUCTED ON THE FOLLOWING PAGE:

Have you ever been convicted of any CRIMINAL OFFENSE involving dishonesty or a breach of trust? ___ YES ___ NO

To facilitate the process of obtaining a credit and background check, please provide the following:

1. Any other names which you have used: _____and,
2. Previous address, (if your address changed over the past 2 years):

_____
_____
_____

3. Name of Spouse: _____

READ THE FOLLOWING CAREFULLY BEFORE SIGNING

CERTIFICATION AND AGREEMENT TO SERVE

I certify that the information provided on this form is true and correct. Further, I, the undersigned, having been duly designated to occupy the position(s) indicated above, do hereby agree to serve in the above-stated office(s) of this proposed credit union until the first annual meeting held in accordance with the Federal Credit Union Act and the bylaws of this credit union and until the election of my successor(s). I further pledge to carry out the duties and responsibilities commensurate with said office(s) as promulgated by the Federal Credit Union Act and the bylaws of this credit union. I have read the Privacy Act Notice on the reverse side of this form.

_____

Date Signature Witness

PRIVACY ACT NOTICE

The Privacy Act of 1974 (Public Law 93-579) requires that you be advised as to the legal authority, purpose and uses of the information solicited by this form. Pursuant to Sections 104 and 205(d) of the Federal Credit Union Act, the information in this form is requested for the purpose of completing the investigation required for a new Federal credit union. The information in this form will be primarily used in considering the soundness of the management for the proposed Federal credit union. However, this form may be disclosed to any of the following sources: a congressional office in response to your inquiry to that office; an appropriate Federal, state or local authority in the investigation or enforcement of a statute or regulation; or employees of a Federal agency for audit purposes. Failure to complete this form or omission of any item of information, except for disclosure of your social security number, may result in a delay in the process for chartering the proposed Federal credit union. In accordance with Section 792.68 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form. No penalty will result to you as a management official or to the chartering of the proposed Federal credit union if you do not provide your social security number.

Further information needed if answer to CRIMINAL OFFENSE question on the previous page was YES:

CRIMINAL OFFENSE:

Nature of offense: _____

Date of occurrence: _____ **Date of conviction:** _____

Sentence conferred: _____

(Attach a separate sheet if space provided is not adequate)

CRIMINAL OFFENSE GUIDELINES

The Federal Credit Union Act, Subchapter II, Section 205(d), requires that, except with the written consent of the Administrator, no person shall serve as director, officer, committee member, or employee of an insured credit union who has been convicted or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust. To assist the Administrator in making a determination of the fitness of a person who is selected to serve and who the organizer believes is qualified to serve as an official, the specific information above will need to be furnished.

If the Board believes that, in view of the facts presented and the date of the offense, they can give their consent to the appointment they will so advise that person in writing. If on the other hand, the Board believes after careful consideration that they cannot in good conscience give their written consent to the appointment they will contact the organizer and ask that another person be selected for the position. The person selected will have to complete a Report of Official and Agreement to Serve.

An indication of whether the bonding company would agree to provide coverage should be included if the person is to serve as treasurer. Bonding company agrees to provide coverage: ___ YES ___ NO

AUTHORIZATION TO OBTAIN A CREDIT REPORT

The National Credit Union Administration (NCUA) may evaluate the competence, experience, character, and integrity of any individual who is to serve as an official, employee, or committee member of a federally insured credit union, in accordance with §1790a of the Federal Credit Union Act and Chapter 1, §V.B.4 of the NCUA Chartering and Field of Membership Manual.

NCUA may disapprove any individual whose employment it believes will not be in the best interest of the credit union or of the public. To assist in the evaluation process, NCUA may obtain and review an individual' s credit report.

Your signature on this document authorizes NCUA to obtain a copy of your credit report.

_____

Last First Middle

Social Security Number: _____

Date of Birth: _____

_____

Signature Date

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT NCUA FORM 4015

USE FOR MULTIPLE COMMON BOND EXPANSION FOR GROUPS OF 3,000 OR MORE PERSONS

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union:

_____

_____

_____

2. Name and address of the group:

_____

_____

_____

(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording. Use the example wording found in NCUA's *Chartering and Field of Membership Manual,* Chapter 2:

- ☐ Section II.A for single occupational common bond groups;
- ☐ Section III.A for single associational common bond groups; or
- ☐ Section IV.A for multiple common bond fields of membership.

_____

_____

_____

4. How many primary potential members (excluding immediate family and household members) are in the group:

_____

5. (a) For multiple common bond expansions, what is the distance between the group's location and your credit union's nearest service facility[1] to which the group has access (Reference Chapter 2, Section IV.A.1):

_____

_____

(b) What is the address of this service facility:

_____

_____

_____

[1] **A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed.**

(c) Describe the service area[2] primarily served by the above service facility:

_____

_____

_____

_____

6. Is the group in the field of membership of any other credit union? Yes___ No___

If yes, and the overlapped credit union is not a community credit union or a non-federally insured credit union, please address the following:

☐ Provide the name and location of the other servicing credit union:

_____

_____

_____

☐ Include a letter from the overlapped credit union indicating whether it concurs or objects to the overlap. If the overlapped credit union objects or fails to respond, document attempts to resolve the issue:

_____

_____

_____

_____

☐ Explain how the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union:

_____

_____

_____

_____

7. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

☐ how the group shares the occupational or associational common bond (for single common bond additions only);
☐ that the group wants to be added to the federal credit union's field of membership;
☐ whether the group presently has other credit union service available;
☐ the number of persons currently included within the group to be added and the group's location(s);

---

[2] **A federal credit union's service area is the area that can reasonably be served by the service facility accessible to the groups within the field of membership. It will most often coincide with that geographic area primarily served by the service facility.**

- ☐ the group's proximity to the credit union's nearest service facility (for multiple common bond additions only); and
- ☐ why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards (for multiple common bond additions only). *The formation of a separate credit union may not be practical if the group lacks sufficient volunteers or resources to support the operation of a credit union or does not meet the economic advisability criteria outlined in Chapter 1 of NCUA's Chartering and Field of Membership Manual.*

8. Other comments:

_____

_____

_____

_____

_____

_____

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____	_____	_____
(Typed/Printed Name)	(Signature)	(Date)

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT
NCUA FORM 4015-EZ

USE FOR MULTIPLE COMMON BOND EXPANSIONS OF LESS THAN 3,000 PERSONS AND ALL SINGLE COMMON BOND EXPANSIONS

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union:

_____

_____

_____

2. Name and address of group:

_____

_____

_____

(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording:_____

_____

_____

4. How many primary potential members (excluding immediate family and household members) are in the group: _____

5. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

- ☐ that the group wants to be added to the federal credit union's field of membership;
- ☐ the number of persons to be added and the group's location(s);
- ☐ the group's proximity to the credit union's nearest service facility **(for multiple common bond additions only).** _____ **Distance to nearest service facility, and**
- ☐ how the group shares the occupational or associational common bond **(for single common bond additions only)**;

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____ _____ _____

(Typed/Printed Name and Title) (Signature) (Date)

NOTICE OF MEETING OF THE MEMBERS

_____ FEDERAL CREDIT UNION

_____ _____
(City) (State)

THIS PROPOSITION WILL BE DECIDED BY A MAJORITY OF THE MEMBERS WHO VOTE.

Notice Is hereby given that a meeting of the members of _____ Federal Credit Union has been called and will be held at_____ _____ on _____, at _____ o'clock, __.M. for the purpose of considering and voting upon the following resolution:

> "RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and that its operation under Federal charter be discontinued.
>
> RESOLVED FURTHER, That the board of directors and the officers of this credit union and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

The board of directors of this credit union has given careful consideration to the advantages and the disadvantages of the proposed conversion and believes it to be in the best interest of the members for the following reasons:

The proposed conversion would result in the following disadvantages or adverse changes in services and benefits to the members of the credit union:

The proposed conversion would result in the following costs of conversion (i.e. changing the credit unions name, examination and operating fees, attorney and consulting fees, tax liability, etc):

The board of directors recommends that the members approve the proposal to convert to a State charter

The members' accounts will ☐ will not ☐ continue to be insured by the National Credit Union Share Insurance Fund.

Attached is your ballot. You are urged to bring your ballot to the meeting and to cast your vote after hearing the discussion of the proposal. If you cannot attend the meeting, you are urged to mark your vote, date and sign your ballot, and return it to the following address by no later than the date and the time announced for the meeting of the members:

BY ORDER OF THE BOARD OF DIRECTORS

_____

TITLE: _____
(CHIEF EXECUTIVE OFFICER)

_____

TITLE: _____
(CHIEF RECORDING OFFICER)

Issued _____ (Date)

APPLICATION TO CONVERT FROM A STATE TO A FEDERAL CREDIT UNION

The _____ Credit Union of _____ (city), _____ (State), incorporated under the laws of the State of _____ on _____ by decision of its board of directors, hereby makes application to the National Credit Union Administration to convert to a Federal credit union.

1. Field of membership of State-chartered credit union. (Use exact wording of charter, articles of incorporation or bylaws, as amended to date.) _____
   _____
   _____
   _____
   _____

2. Is proposed Federal charter to cover same field of membership? Yes ☐ No ☐ If answer is "No," explain fully: _____
   _____
   _____
   _____
   _____

3. Standard financial and statistical reports as of _____or comparable forms of reports, certified correct by the treasurer and verified by the affidavit of the president or vice-president, are attached.

4. A schedule of delinquent loans classified 2 to 6 months, 6 to 12 months, and 12 months and over delinquent is attached. (As a minimum, schedule should include for each delinquent loan: loan date, last payment date, unpaid balance, security, and comment on collectibility.)

5. The following policies on loans to members are currently in effect in this credit union:

   a. Interest rates on loans: _____

   b. Charges Incident to making loans which are passed on to borrowers: _____

   c. Maturity limits: _____

   d. Unsecured loan limit: _____

   e. Secured loan limit: _____

   f. Types of security accepted: _____

   g. Requirements of amortization (Repayment requirements): _____

6. Attached is a list of unsecured loans in excess of the amounts stipulated in the Act. (For each loan show account number, original amount, terms, and unpaid balance.)

7. Attached is a list of loans with maturities in excess of periods stipulated in the Act and the NCUA Rules and Regulations. (For each loan show account number, original amount, terms, unpaid balance, and security.)

8. Types of accounts which members are required or are permitted to maintain: Share ☐ Deposit ☐ Other ☐ (describe): _____

9. Describe any real estate owned by credit union, including a list of its current market value: _____

10. Describe and list any investments which are outside of the investment powers of Federal credit unions (Refer to Section 107(7), Federal Credit Union Act):_____

11. Names and locations of any depository institutions in which the credit union deposits its funds but which are beyond the purview of deposit powers authorized by Section 107(8) of the Federal Credit Union Act: _____

12. Describe any services rendered to or on behalf of members or of the public, other than accepting and maintaining accounts of members and making loans to members: _____

13. Describe what you propose to do about any policies, procedures, assets or liabilities which do not comply with the Federal Credit Union Act: _____

14. Give specific reasons as to why you desire to convert to a Federal credit union:

We hereby authorize the National Credit Union Administration to examine our books and our records.

We, the undersigned _____ Chief Executive Officer and _____ Chief Financial Officer of the _____ Credit Union of _____ State of _____ certify: That we are the duly elected Chief Executive Officer and the Chief Financial Officer, respectfully, of said credit union; that the statements made in this Application to Convert from a State to a Federal Credit Union and the schedules attached hereto are true, complete, and correct to the best of our knowledge and belief and are made in good faith.

_____
TITLE: _____
(CHIEF FINANCIAL OFFICER)

_____
TITLE: _____
(CHIEF RECORDING OFFICER)

AFFIDAVIT
PROOF OF RESULTS OF MEMBERSHIP VOTE PROPOSED CONVERSION

We, the undersigned _____ president/vice president and _____ secretary of the _____ Federal Credit Union, hereby swear or affirm as follows:

1. That the conversion proposal as set forth in the attached Notice of Meeting of the Members was fully explained to the members present at said meeting of members.

2. That on the date of the said meeting of members there were _____ members of this credit union qualified to vote; _____ members were present at said meeting; of those members present, _____ members voted in favor of the conversion and _____ members voted against the conversion; of those members not present at the meeting but who filed ballots, _____ members voted in favor of the conversion and _____ members voted against the conversion; and that, without duplication of the votes of any member, a total of _____ members voted in favor of the conversion and _____ members voted against the conversion.

3. That the action of the members of this credit union at said meeting is fully and completely recorded in the minutes of said meeting and all ballots cast by the members on the question of conversion, either at the meeting or by delivery to the credit union, are on file with the secretary of this credit union.

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

_____
Federal Credit Union

Subscribed before me, an officer competent to administer oaths, at _____
_____, this _____
(day) (month) (year)

Signed _____

(SEAL)

Title _____

(Notary Public or other competent officer)

My Commission Expires _____, _____
(year)

FEDERAL TO STATE CONVERSION

BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____ to consider and to vote upon the following proposition:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and operation under Federal Charter Number _____ be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date: _____

NCUA 4506

FEDERAL TO STATE CONVERSION

BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____ to consider and to vote upon the following proposition:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and operation under Federal Charter Number _____ be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date: _____

NCUA 4506

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

Date: _____

TO: The National Credit Union Administration Board (Board)

The proposed _____ Federal Credit Union

_____
(Street Address)

_____
(City) (State) (Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the application for insurance.

2. To permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and other insured credit unions.

3. To permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Board may require.

4. To provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.

5. To maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members.

6. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board.

7. To pay and maintain the capitalization deposit required by Title II of the Federal Credit Union Act.

8. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.

9. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Board pursuant thereto.

10. To permit the Board to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that the Board may require.

11. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. In support of this application the undersigned submit the Schedules described below:

Schedule No. _____ Title _____

We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any proposed or future officer commits a criminal offense.

_____ _____

Chief Executive Officer Chief Financial Officer

Note: A willfully false certification is a criminal offense. U.S. Code, Title 18. Sec. 1001.

CERTIFICATION OF RESOLUTIONS

_____ FEDERAL CREDIT UNION (PROPOSED)

We certify that we are the duly elected and qualified chief executive officer and recording officer of the above-named proposed Federal credit union and that at the charter-organization meeting the board of directors passed the following resolution and recorded it in its minutes:

"Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it further resolved that the president and treasurer be authorized and directed to execute the Application and Agreements for Insurance of Accounts as prescribed by the Board and any other papers and documents required in connection therewith; to pay all expenses and do all other things necessary or proper to secure and continue in force such insurance."

_____

Chief Executive Officer

_____

Recording Officer, Board of Directors

INFORMATION TO BE PROVIDED IN SUPPORT OF THE APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

_____Credit Union

1. Show below the location of the credit union's books and records.

_____
(Street Address)

_____
(City) (State) (Zip) (Telephone)

2. Show the date (month, day, year) in which the credit union was chartered. _____

3. Attach a copy of the credit union's field of membership as shown in the charter, articles of incorporation and/or bylaws, as amended to date. Please identify it as the first schedule in the consecutive number sequence as discussed in the instructions. Schedule No. _____

4. Potential membership (total number of persons who could be served including present members. _____

5. Describe type activity sponsor organization is engaged in. (See instructions pertaining to item No. 5.) _____

6. Does the credit union operate under standard bylaws provided by the state supervisory authority? Yes ☐ No ☐ (Stop) (Complete a.)

   a. Attach a copy of the current official bylaws under which the credit union operated. Schedule No. _____

7. Is the credit union under any administrative restraints by the State Supervisory Authority? Yes ☐ No ☐ (Stop) (Complete a.)

   a. Explain fully on an attached schedule. Schedule No. _____

8. Attach a copy of the latest State supervisory authority examination. Copies of any correspondence from the accountant's report if made in lieu of a State supervisory authority examination. Copies of any correspondence from the State supervisory authority which accompanied the examination report should also be included.

9. Attach copies of the Balance Sheet and Statement of Income and Expense (or Financial and Statistical Report) for the month preceding the date of this application and for the same month of the preceding year. Schedule Nos. _____ (Identify current year statement with (a) after schedule no. and previous Year with (b).)

10. Reserves

Show below the requirements of the State law and/or your bylaws for transfer of earnings to reserves (either monthly or at the end of each accounting period).

_____

11. Delinquent Loans and Charged-off Loans

a. Attach a copy of the delinquent loan list as of the month-end preceding the date of this application. See instructions pertaining to Item No. 11 a. on page 7. Schedule No. _____

b. List below the requested information on delinquent loans for the latest four calendar quarters preceding the date of the application (March 31, June 30, September 30 and December 31). Also show total share and loan balances for all members for the same period.

(a) *Other Delinquent Categories	(b) Delinquent Categories	Date	Date	Date	Date
	2 to less than 6 mos.	$	$	$	$
	6 to less than 12 mos.	$	$	$	$
	12 mos. and over	$	$	$	$
	Totals	$	$	$	$
	Share Balances	$	$	$	$
	Loan Balances	$	$	$	$

*See instructions pertaining to Item No. 11 b.

c. List below the requested information on loans charged off during the last three years and the current year. List total of all reserves both revocable and irrevocable for the same period as (balance at year-end and or current period).

	Year	Year	Year	Current Yr. To Date	*Totals Since Organization
Total Charged Off					
Total Recovered					
Net Charged Off					
Total of all Reserves					

- If this information is available.

12. Does the credit union have any unrecorded or contingent liabilities, (including pending law suits or civil actions)? Yes ☐ No ☐ (Stop) (Complete a.)

a. List on an attached schedule the complete description of such liabilities, including amounts, status of the items, and a description of the circumstances creating the liabilities or contingent liabilities. Schedule No. _____

13. Do any asset accounts other than loans to members, investments, and real estate have actual values less than the book values shown on the Balance Sheet?

List on a separate schedule a description of such assets, showing at least the following information; account number, description of item, book value and actual value. Schedule No. _____

14. List below or on an attached schedule, any investments or real estate as discussed in the instructions pertaining to Item No. 14. Schedule No. _____ . Attach a copy of the credit union's current investment policies. Investments/Loans to Credit Union Service Organization (CUSO) should be listed separately on page 6.

Description of Item	Current Market Value	Current Book Value
	$	$
	$	$
	$	$

15. Individual Share and Loan Ledgers:

a. Were the totals of the trial balance of the individual share and loan ledgers in agreement with the balances of the respective general ledger control accounts as of the month-end preceding the date of this application? _____

b. What are the differences as of the month and preceding the date of this application?

	Shares	Loans
Balances in General Ledger	$	$
Totals of the trial balance of the individual ledgers	$	$
Differences	$	$

16. Supervisory Committee:

a. What is the effective date of the last complete comprehensive annual audit performed by the supervisory committee?
Effective Date _____

(1) If the effective date of the annual audit is not within the last 18 months what is the supervisory committee's target date for completion of a comprehensive audit? Date _____

b. Show the effective date of the supervisory committee's last controlled verification of all members' accounts:
Effective Date _____

(1) If all members' accounts have not been verified under controlled conditions during the last two years, what is the supervisory committee's target date for completion of the verification program?
Date _____

c. If it is necessary to complete either 16a(1) or 16 b(1); please describe the directors' plans for seeing that the target dates are met. (Discuss below or on an attached schedule.) Schedule No. _____

17. List below the credit union's surety bond coverage.

a. Name of carrier _____

b. Standard form number of the bond (i.e. 23, 576, 577, 578, 581, 562 CU-1, other) _____

c. Basic amount of coverage $_____

d. Bond premium paid to (date) _____

e. What is the amount of coverage required by State law or your bylaws? _____

f. Riders to the bond (list below) (i.e., faithful performance, forgery, misplacement, etc.) _____
_____

18. Does the credit union render any services to or perform any functions on behalf of the members, non-members, organizations, or the public other than the usual savings and loan services for members? _____

Attach a schedule describing each activity in full. Schedule No. _____

19. Does the board of directors or management know of any adverse economic condition that is affecting or will affect the credit union's present or future operation or that of the sponsor organization? _____

Attach a schedule describing the condition and its possible effect on the credit union's future. Schedule No. _____

20. To the best of the credit union's knowledge and belief, has any director, officer, committee member, or employee been convicted of any criminal offense involving dishonesty or breach of trust? _____

a. Attach a statement describing the circumstances. Schedule No. _____

21. Lending policies and practices:

a. Complete the following schedule showing the present policies and practices on loans to members.

b. Complete the following schedule of largest loans with the attached instructions pertaining to Item No. 21.

LENDING POLICIES AND PRACTICES

	Maximum Loan Amount	Maximum Period of Repayment	Required Amount of Down Payment (Equity)
1. Credit Union Policies and Practices			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
(1) New Auto Collateral			
(2) Used Auto Collateral			
(3) Real Estate			
(a) First Mortgage			
(b) Second Mortgage			
(4) Comakers			
(5) Others (describe)			
c. Loans to Organizations			
d. Loans to Directors, Officers, or Committee Members			
2. State Credit Union Law; Bylaws			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
c. Loans to Directors, Officers, or Committee Members			

List below or an attached page, any additional policies, including the interest rates applied to members' loans and the method of assessing and accounting for interest income, i.e.: add-on, discount or unpaid balance.

SCHEDULE OF LARGEST LOANS

Complete this form as discussed in the instructions pertaining to Item 21b.

Account No.	Unpaid Loan Bal.	Repayment Period (No. Months)	Status of Repayment		Appraised Collateral Value*	Description of Collateral
			Current	Delinquent (No. Months)		

*If there is more than one type of collateral assign value to each type.

CREDIT UNION SERVICE ORGANIZATION (CUSO)

1. Name of CUSO _____

2. Date of CUSO'S Organization _____
   (Date of obtaining charter from State)

3. Type of organization (check one):

   a. General Partnership ☐ c. Joint Ownership ☐

   b. Limited Partnership ☐ d. Corporation ☐

4. Owners of CUSO (list name, charter number if FCU, and percentage of ownership, if possible).

   a. _____ _____ _____
   Name Charter Number (If FCU) %

   b. _____ _____ _____
   Name Charter Number (If FCU) %

   (Continue on reverse side if additional space is required)

5. Capitalization (list investors and amount of investment in CUSO).

   a. _____ _____ _____
   Name Charter Number (If FCU) Amount

   b. _____ _____ _____
   Name Charter Number (If FCU) Amount

   (Continue on reverse side if additional space is required)

6. List all known services which are being offered by CUSO (be as specific as possible).

7. Comments (include all other pertinent information, if applicable, not previously discussed). _____

_____

_____

_____

8. Attach the latest Financial and Statistical Report of CUSO, if available.

FORM 9600 INSTRUCTIONS

APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

The application and all supporting documents should be prepared, photocopied, and submitted in accordance with the procedures outlined in the letter that transmitted these instructions. Additional schedules may be included if deemed appropriate.

All items should be completed. If the answer given to a question is followed by the word."Stop," proceed to the next numbered question. If, however, the answer given is followed by instructions, the additional parts of that question should be completed before going on to the next question.

When an item specifies that a schedule should be prepared and attached, please assign a schedule number in consecutive order, starting with number one. Please show the schedule number at the top right-hand corner of the schedule.

Some of the items are self-explanatory and require no special instructions. Other items, however, need special explanations, definitions, and instructions for completion. These are listed below, identified by the same item numbers as appear in Exhibit A.

Item No. 5: Show whether the sponsor organization is associational, occupational or residential. If occupational, please show the specific products or services produced.

Item No. 10: Reserves: The term "reserves" means that account, or accounts, which represents segregated portions of earnings as provided by the law, bylaws, and/or the credit union's management for the absorption of losses relating to loans to members.

Item No. 11a: The delinquent loan list requested should include, for each delinquent loan, the account number of the borrower, date of loan, original amount of loan, unpaid balance, date of last payment of principle, excluding transfers from pledged shares, collateral, and comments regarding the collectibility of each loan in the categories 6 months to less than 12 months and 12 months and over. Payments of interest only should be so identified.

For the purpose of this application, loan delinquency will be determined on the basis of the borrowers' payments in relation to the terms of the notes, as follows:

If a loan is in arrears by two monthly payments plus any part of the third payment, the loan is 2 months delinquent and, therefore, the entire unpaid balance is shown in the 2 months to less than 6 months category. A loan in arrears a total of 6 monthly payments plus any part of the seventh payment would be 6 months delinquent and the entire unpaid balance shown in the 6 months to less than 12 months category. A loan in arrears a total of 12 monthly payments plus any part of the thirteenth payment would be 12 months delinquent and the entire unpaid balance shown in the 12 months and over category.

Item No. 11b: The schedule provided for the delinquent loan information is set up in delinquency categories of 2 months to less than 6 months, 6 to less than 12 months, and 12 months and over. Credit unions that compute delinquency using categories other than shown in column (b) may use these other categories and show them in column (a). Credit unions using column (a) need not show the delinquencies in the column (b) categories. It is not necessary to report on loans which are delinquent less than 2 months.

Adverse Trends: If items 8, 9, or 11 indicate adverse trends such as significant decreases in shares, loans or reserves, increases in loan delinquency or loan charge-offs, or unresolved serious exceptions shown in the State examination report, the credit union may attach an explanation and identify it as "Explanation of Adverse Trends or Unresolved Examination Exceptions" and assign it a schedule number.

Item No. 14: This item need be completed only if the credit union owns any of the following:

A. Investments in U.S. Government securities guaranteed as to principle and interest or Federal Agency securities, the market value of which is now less than the book value.

B. Real estate other than that used entirely for the credit union's own office(s).

C. Other investments of any type except:

1. Loans to other credit unions.
2. Certificates of, or accounts in, federally insured savings and loan associations.
3. Certificates of deposit in National or State banks.
4. Deposits or accounts in State central credit unions.
5. Common trust investments with International Credit Union Services Corporation (ICUS).

If corporate bonds are listed, please show maturity date, rate of interest on bonds and current yield rate.

If stocks are listed, please show number of shares and bid price.

Please identify the source of the market valuation information and the date of such information.

Item No. 21 b: The largest loans to members should be shown on page 5. In selecting the loans for this Exhibit, list the largest outstanding unpaid loan balance and proceed in descending order by dollar amount until the number specified below has been shown. The number of such loans to be listed will be determined as follows:

If your credit union has the following no. of outstanding loans	You should list the following no. of the largest unpaid balances

Under 100	5
100 to 199	10
200 to 299	15
300 to 399	20
400 or more	25

If any of the above loans are delinquent, please show the number of months delinquent in the appropriate "Status of Re-payment" column.

Page 6: Complete page 6 for each investment/loan to a Credit Union Service Organization (CUSO).

TERMINATION OF INSURANCE

Should the credit union, after obtaining insurance of member accounts, desire to terminate its insured status, this could be accomplished by complying with the provisions of Section 206(a), (c) and (d) of Title II of the Federal Credit Union Act. This action would require approval by a vote of the majority of the members, and ninety days written notice of the proposed termination date to NCUA. Member accounts would continue to be insured for one year following termination of insurance and the insurance premium would be paid during that period. After termination of insurance, the credit union shall give prompt and reasonable notice to all members whose accounts are insured that it has ceased to be an insured credit union.

Sections 206(a)(2) and 206(d)(2) and (3) of the Act provide that an insured credit union may also terminate its insurance by converting from its status as an insured credit union under the Act to insurance from a corporation authorized and duly licensed to insure member accounts. In this event, approval is required by a majority of all the directors and by affirmative vote of a majority of the members voting, provided that at least 20 percent of the members have voted on the proposition. Under this provision for termination, insurance of member accounts would cease as of the date of termination.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS STATE CHARTERED CREDIT UNION

TO: The National Credit Union Administration Board Date _____

The _____ Credit Union,

Insurance Certificate Number _____ (if applicable)

_____

(mailing address) (city) (state) (zip code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To permit and pay the cost of such examinations as the NCUA Board deems necessary for the protection of the interests of the National Credit Union Share Insurance Fund;

2. To permit the Board to have access to all records and information concerning the affairs of the credit union, including any information or report related to an examination made by or for any other regulating authority, and to furnish such records, information, and reports upon request of the NCUA Board;

3. To possess such fidelity coverage and such coverage against burglary, robbery, and other losses as is required by Parts 713 and 741 of NCUA's regulations;

4. To meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal Credit Unions by Part 702 of NCUA's regulations, and to maintain such special reserves as the NCUA Board may be regulation or on a case-by-case basis determine are necessary to protect the interests of members. Any waivers of the statutory reserve or full and fair disclosure requirements or any direct charges to the statutory reserve other than loss loans must have the prior written approval of the NCUA Board. In addition, corporate credit unions shall be subject to the reserve requirements specified in Part 704 of NCUA's regulations;

5. Not to issue or have outstanding any account or security the form of which has not been approved by the NCUA Board, except accounts authorized by state law for state credit unions;

6. To maintain the deposit and pay the insurance premium charges imposed

as a condition of insurance pursuant to Title II (Share Insurance) of the Federal Credit Union Act;

7. To comply with the requirement of Title II (Share Insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto; and

8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

9. When a state-chartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share Insurance Fund. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(1) and 206(c) of the Federal Credit Union Act and Part 741.208 of NCUA's regulations.

11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act.

In support of this application we submit pages 1-6 and Schedules described below:

Schedule No.	Title

APPENDIX E

TRADE ASSOCIATIONS

Credit Union National Association
(CUNA)
P.O. Box 431
Madison, WI 53701
608-231-4000

National Association of Federal Credit
Unions (NAFCU)
3138 N. 10th Street, Suite 300
Arlington, VA 22201
703-522-4770

National Association of State Credit Union
Supervisors (NASCUS)
1901 North Fort Myer Drive
Suite 201
Arlington, VA 22209
703-528-8351

National Federation of Community
Development Credit Unions
(NFCDCU)
120 Wall Street, 10th Floor
New York, NY 10005-3902
212-809-1850

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South Carolina; comments due by 12-13-02; published 11-13-02 [FR 02-28699]
Virginia; comments due by 12-12-02; published 11-12-02 [FR 02-28695]
Air quality planning purposes; designation of areas:
District of Columbia et al.; comments due by 12-13-02; published 11-13-02 [FR 02-28845]
Radiation protection programs:
Disposal regulations; Waste Isolation Pilot Plant compliance; certification and recertification criteria—
Alternative provisions; comments due by 12-9-

LIST OF PUBLIC LAWS

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H.R. 3833/P.L. 107–317
Dot Kids Implementation and Efficiency Act of 2002 (Dec. 4, 2002; 116 Stat. 2766)
H.R. 5504/P.L. 107–318
Anton's Law (Dec. 4, 2002; 116 Stat. 2772)
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