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WHO: The Office of the Federal Register.

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

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Title 3—

The President

Proclamation 6760 of December 3, 1994

National Drunk and Drugged Driving Prevention Month, 1994

By the President of the United States of America

A Proclamation

All across the Nation, Americans are coming together in an ever-expanding chorus of voices demanding an end to drunk and drugged driving. Too many family members and friends have already been lost. In recent years numerous grassroots organizations have arisen throughout the land and dedicated themselves to ending this national tragedy. In big cities and small towns across the country, students, parents, and concerned citizens recognize that education and prevention are the keys to saving lives. Naming a designated driver is an idea embraced by millions of Americans, and many schools now include drunk driving awareness programs as part of their curricula.

Despite the tremendous efforts of both the private and public sectors, drunk and drugged driving remains America's number one danger on the highways. We must redouble our efforts to teach all Americans that alcohol and drugs—used alone or in combination—cause loss of control and loss of judgment, and that under these circumstances it is irresponsible and dangerous to attempt to drive.

Countless caring people across the country have taken on the daunting challenge of changing the way Americans think about alcohol, drugs, and driving. They have moved forward with an energy born of a deep personal commitment to serving the common good. Thanks in great part to their devotion and hard work, parents can feel a little safer and a little more secure about their children's future. This month, I ask each citizen to work actively to make our roads and highways safer—for the good of our children and for our Nation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1994 as "National Drunk and Drugged Driving Prevention Month." I ask all Americans to reaffirm that being drunk or drugged is unacceptable and to intervene by stopping anyone impaired by drugs or alcohol from getting behind the wheel. I call upon public officials at all levels, as well as interested citizens and groups, to observe this month with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of December, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-30240
Filed 12-5-94; 2:57 pm]
Billing code 3195-01-P

Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AG45

Absence and Leave; Use of Restored Annual Leave

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to provide employees with additional time in which to use restored annual leave that was forfeited as a result of employment at a Department of Defense installation undergoing closure or realignment.

DATES: The interim regulations are effective on December 7, 1994. Comments must be received on or before February 6, 1995.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jo Ann Perrini, (202) 606–2858.

SUPPLEMENTARY INFORMATION: Section 4434 of Public Law 102–484, the National Defense Authorization Act for fiscal year 1993, amended section 6304(d) of title 5, United States Code, to consider the closure of an installation of the Department of Defense (DOD), during the period from October 1, 1992, through December 31, 1997, as "an exigency of the public business" for the purpose of restoring annual leave accumulated in excess of the maximum permitted by law. This amendment also provides that any annual leave in excess of the annual maximum limitation under 5 U.S.C. 6304(a) accrued by an employee at a closing DOD installation must be restored and credited to the employee in a separate leave account. This provision enables installations to keep their already reduced staffs at work while permitting employees to avoid forfeiture of leave. In addition, it reduces the administrative time that would have been spent by employees and managers in scheduling, canceling, and restoring "use or lose" annual leave each leave year.

Sections 341 and 2816 of Public Law 103–337, October 5, 1994, the National Defense Authorization Act for fiscal year 1995, expanded 5 U.S.C. 6304(d)(3) to cover employees of DOD installations identified as "realigning locations" under the Defense Base Closure and Realignment Act of 1990 (BRAC) and eliminated the time period for application of 5 U.S.C. 6304(d)(3) if the closure or realignment action is under BRAC. The October 1, 1992, through December 31, 1997, time frame in 5 U.S.C. 6304(d)(3) continues to apply to the closure of DOD installations not covered by BRAC.

Time Limit for Using Restored Annual Leave

Under the current 5 CFR 630.306, all restored leave must be scheduled and used not later than the end of the leave year ending 2 years after the termination date of the exigency of the public business—i.e., the closure or completion of the realignment of the DOD installation and/or transfer of the employee to another installation or agency. Employees remaining at closing DOD installations or BRAC designated realignment installations over several leave years may accumulate large amounts of restored leave in their separate accounts. When the exigency of the public business terminates, the employee must schedule and use all of the restored leave by the end of the leave year ending 2 years after the termination date of the exigency of the public business. As a result, the employer must deal with the consequence of the employee using sizeable amounts of leave within 2 to 3 years after the transfer or completion of the realignment. At the same time, annual leave that accrues during that 2- to 3-year period routinely creates a "use or lose" situation.

To help alleviate this situation, the Office of Personnel Management (OPM) is revising 5 CFR 630.306 to establish a longer period of time for using annual leave restored under 5 U.S.C. 6304(d)(3) based on the amount of restored leave in the employee's separate leave account. The time limit would be calculated using a formula similar to the formula used for determining the time limit for using annual leave restored in back pay situations. (See 5 CFR 550.805(g).)

Under the interim regulations, a full-time employee would be required to schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date the employee is no longer subject to 5 U.S.C. 6304(d)(3). The agency would extend that period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof. A part-time employee would be required to schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee is no longer subject to 5 U.S.C. 6304(d)(3). The agency would extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

Movement From One DOD Installation Undergoing Closure or Realignment to Another Such Installation

Under the current 5 CFR 630.306, the time limit for using annual leave restored under 5 U.S.C. 6304(d)(3) begins when an employee moves from a closing DOD installation or a DOD installation undergoing realignment, even if the employee is transferring to another DOD installation subject to closure or realignment. This creates a situation that is directly opposite to the result that 5 U.S.C. 6304(d)(3) was intended to correct. Employees who move from one DOD installation undergoing closure or realignment to another such installation without a break in service are under strict time constraints to use their restored leave. At the same time, they are needed at work because of reduced staff levels. Supervisors and managers may be hesitant to deny leave requests because restored leave that is forfeited cannot be

recovered. Further complicating the situation is the fact that these employees may be entitled to additional restored leave under 5 U.S.C. 6304(d)(3).

OPM agrees with DOD's conclusion that the exigency of the public business that allows for the accrual of annual leave above the annual maximum limitation does not terminate when an employee moves from one closing or realigning installation to another such installation without a break in service. Therefore, OPM's regulations will defer starting the time limit for using restored leave until the employee no longer works at a closing DOD installation or a DOD installation undergoing realignment.

Movement to an Installation Undergoing Closure or Realignment

When an employee moves to a closing DOD installation or a DOD installation undergoing realignment, 5 U.S.C. 6304(d)(3) only permits the restoration of annual leave that exceeds the annual maximum carry-over limitation. There is no similar protection for an "active" restored annual leave account—i.e., an account of restored annual leave that was established under other conditions permitting restoration of annual leave under 5 U.S.C. 6304(d). Although the employee is needed to work at the installation that is undergoing closure or realignment, the employee (and the agency) have little option but to use (or permit the use of) the leave in the "active" restored leave account to avoid the forfeiture of annual leave. This situation is also inconsistent with the overall intent of 5 U.S.C. 6304(d)(3).

OPM's revision of § 630.306, as discussed above, will also alleviate this problem, since the time limitation for using a restored leave account will be canceled for the entire period during which an employee is subject to 5 U.S.C. 6304(d)(3). After the employee's coverage under 5 U.S.C. 6304(d)(3) ends, a new time limit will be established for all restored leave available to the employee under 5 U.S.C. 6304(d). The new time limit for using restored leave will begin on the date the employee is no longer subject to 5 U.S.C. 6304(d)(3).

Advance Scheduling of Annual Leave

Under the current 5 CFR 630.308, before annual leave forfeited under section 6304 of title 5, United States Code, may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. Under 5 U.S.C. 6304(d)(3), employees at closing DOD installations or DOD installations undergoing realignment are permitted to have excess annual leave restored without meeting the requirement for advance scheduling of annual leave.

DOD has identified two problems that are encountered by an employee whose coverage under 5 U.S.C. 6304(d)(3) ends during the leave year. Some of these employees face forfeiting "use or lose" annual leave at the end of the leave year at the new installation because they are unable to show any evidence of advance scheduling of annual leave. Other employees request that a "restored" annual leave account be established at the time of their transfer or the completion of the realignment of the DOD installation, even though accrued annual leave is not subject to forfeiture until the end of the leave year. Under 5 U.S.C. 6304(d), excess annual leave cannot be considered for restoration until after the end of the leave year in which it is forfeited.

An employee whose coverage under 5 U.S.C. 6304(d)(3) ends late in the leave year may find it impossible to schedule all annual leave that would be subject to forfeiture before the end of the leave year. DOD has requested that OPM amend § 630.308 to allow agencies to consider restoration of annual leave forfeited at the end of the leave year to an employee whose coverage under 5 U.S.C. 6304(d)(3) ends during the leave year if the employee can demonstrate a correlation between the lack of advance scheduling and coverage under 5 U.S.C. 6304(d)(3).

OPM agrees that such annual leave may be considered for restoration. We have revised the regulations to require affected employees to make a reasonable effort to comply with the advance scheduling requirement in 5 CFR 630.308(a). However, the head of the agency may exempt employees from the advance scheduling requirement if the employee can show that he or she was covered by 5 U.S.C. 6304(d)(3) during the leave year *and* that he or she was unable to comply with the scheduling requirement due to circumstances beyond his or her control.

Although an employee may be exempt from the advance scheduling requirement, this does not *guarantee* that the employee's excess annual leave will be restored, since there may have been sufficient time to schedule and use his or her annual leave before the end of the leave year. Annual leave restored to the employee for the current leave year is subject to the time limitations established in 5 CFR 630.306(a).

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Sections 341 and 2816 of Public Law 103–337, which broadened coverage under 5 U.S.C. 6304(d)(3), were effective on October 5, 1994. In order to give practical effect to this legislation, I find good cause exists to waive the general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b)(3)(B). Also, I find that good cause exists for making this rule effective in less than 30 days. The delay in the effective date is being waived to give affected employees the benefit of these new provisions.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 is revised to read as follows:

Authority: 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484 (106 Stat. 2722) and Pub. L. 103–337 (108 Stat. 2663); § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, June 16, 1965, 3 CFR 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Pub. L. 100–566 (102 Stat. 2834), and 103–103 (107 Stat. 1022); subpart J also issued under 5 U.S.C. 6362 and Pub. L. 100–566 and 103–103; subpart K also issued under Pub. L. 102–25 (105 Stat. 92); and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3 (107 Stat. 23).

Subpart C—Annual Leave

2. Section § 630.306 is revised to read as follows:

§ 630.306 Time limit for use of restored annual leave.

(a) Except as otherwise authorized under paragraphs (b) and (c) of this section or other regulation, annual leave restored under 5 U.S.C. 6304(d) must be scheduled and used not later than the end of the leave year ending 2 years after:

(1) The date of restoration of the annual leave forfeited because of administrative error; or

(2) The date fixed by the agency head, or his or her designee, as the termination date of the exigency of the public business that resulted in forfeiture of the annual leave; or,

(3) The date the employee is determined to be recovered and able to return to duty if the leave was forfeited because of sickness.

(b) Annual leave restored to an employee under 5 U.S.C. 6304(d)(3) must be scheduled and used within the time limits prescribed in paragraphs (b)(1) and (b)(2) of this section:

(1) A full-time employee shall schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date the employee is no longer subject to 5 U.S.C. 6304(d)(3). The agency shall extend this period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

(2) A part-time employee shall schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee is no longer subject to 5 U.S.C. 6304(d)(3). The agency shall extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

(c) The time limits established under paragraphs (a) and (b) of this section for using restored annual leave accounts shall not apply for the entire period during which an employee is subject to 5 U.S.C. 6304(d)(3). When coverage under 5 U.S.C. 6304(d)(3) ends, a new time limit shall be established under paragraph (b) of this section for all annual leave restored to an employee under 5 U.S.C. 6304(d).

3. Section 630.308 is revised to read as follows:

§ 630.308 Scheduling of annual leave.

(a) Except as provided in paragraph (b) of this section, before annual leave forfeited under section 6304 of title 5, United States Code, may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period rather to the end of the leave year.

(b) The requirement for advance scheduling of annual leave in paragraph (a) of this section shall not apply to an employee who is covered by 5 U.S.C. 6304(d)(3). When coverage under 5 U.S.C. 6304(d)(3) terminates during a leave year, the employee shall make a reasonable effort to comply with the scheduling requirement in paragraph (a) of this section. The head of the agency or his or her designee may exempt employees from the advance scheduling requirement in paragraph (a) of this section if coverage under 6304(d)(3) terminated during the leave year and the employee was unable to comply with the advance scheduling requirement due to circumstances beyond his or her control.

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DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 250 and 252

RIN 0584–AB30

Processing of Donated Foods Under the State Processing Program and National Commodity Processing Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Food Distribution Program regulations to strengthen the provisions concerning the processing of donated food and to increase the uniformity between the provisions governing the State processing program and the National Commodity Processing (NCP) Program. The changes incorporated in this final rule reflect the results of two national meetings: a meeting held to discuss ideas on improving the administration of the State processing and the NCP Programs and the Department's Paperwork Reduction Task Force meeting held to discuss ways to reduce the paperwork burden associated with the processing programs.

EFFECTIVE DATE: This final rule is effective January 6, 1995.

FOR FURTHER INFORMATION CONTACT: Beverly King, Chief, Commodity Processing Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 520, 3101 Park Center Drive, Alexandria, Virginia 22302–1594; or telephone (703) 305–2888.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Information Collection

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed.

Title: Technical Amendments to the State processing and National Commodity Processing Programs.

Description: Recommendations made by the Paperwork Reduction Task Force in August 1990 and subsequently incorporated into USDA's 1990 Report to Congress were included in this final regulation. As a result, the reporting and recordkeeping burden hours associated with four program areas will be reduced under this final regulation. The reporting and recordkeeping requirements identified below have been submitted to OMB for approval and are not effective until such approval is obtained and OMB has assigned a control number.

The OMB control numbers assigned to the existing recordkeeping and reporting requirements were approved by OMB for Part 250 under control number 0584–0007 and for Part 252 under control number 0584–0325.

Description of Respondents: Distributing agencies, school food authorities, and commercial food processors.

STATE PROCESSING PROGRAM DESCRIPTION OF RESPONDENT'S ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDENS

CFR Part	Annual No. respondents	Annual frequency response	Average burden per hours	Annual burden
7 CFR 250.30(c):				
Previous	500	1	2 hours	1,000
Proposed	166	1	2 hours	332
7 CFR 250.30(l):				
Previous	57	12	2 hours	1,368
Proposed	19	12	2 hours	456
7 CFR 250.30(m):				
Previous	500	12	1.33 hour	8,000
Proposed	500	9	1 hour	4,500
7 CFR 250.30(n)(4):				
Previous	500	1	1 hour	500
Proposed	0	0	0	0
Total Previous Burden Hours: 10,868				
Total Proposed Burden Hours: 5,288				
Total Difference: −5,580				

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550 and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments. For disputes involving procurements by State agencies and sponsors, this includes any administrative appeal procedures to the extent required by 7 CFR Parts 3015 or 3016.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations.

Background

Section 250.30 of the current Food Distribution Program regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for processing donated foods and prescribes the minimum requirements to be included in such contracts. Part 252 sets forth the terms and conditions under which the Food and Consumer Service (FCS) and commercial firms may enter into National Commodity Processing (NCP) Program contracts for the processing and distribution of designated donated foods to eligible recipient agencies.

On May 25, 1993, the Department published a proposed rule in the **Federal Register** (58 FR 29985) which would amend the Food Distribution Program regulations to strengthen provisions concerning the processing of donated foods and to increase uniformity between provisions governing State processing activities, Part 250, and those governing NCP Program, Part 252. The proposed rule provided a 60-day comment period.

This final rule addresses those provisions regarding food service management companies, contract renewal, requirements for processing contracts, liquidated damages, alternate value pass-through systems, invoice information, substitution of donated food, time frames for processors to pay refunds, refund applications/performance reports, and list of contracting agencies.

Please note that a typographical error in the proposed rule published on May 25, 1993, (58 FR 29995) misidentified section 250.30(k)(3) as section 250.30(k)(4). The Department apologizes for any inconvenience this may have caused in reviewing the proposed rule for comment. Throughout this final rule, the correct section number will be referred to when discussing provisions of that proposed rule in order to avoid further confusion. However, the Department recognizes that the current section 250.30(k)(4) is obsolete, in that it requires distributing agencies to notify processors of the total amount of donated cheese they can receive during the 1988–1989 school year. Because this requirement is no longer pertinent to current program operations, the Department is removing this language from the regulations.

Analysis of Comments

The Department received a total of 41 comment letters from distributing agencies, local school food authorities, commercial food processors, a State school food service association, a private sector representative, the American Commodity Distribution Association, and the American School Food Service Association.

Food Service Management Companies

Sections 250.3 and 250.30(a) of the proposed rule would revise the definition of "processor" and associated requirements to remove the blanket exception from the State processing regulations for commercial food service management companies. Additionally, the proposed rule would revise the definition of "processor" to exempt any commercial enterprises which handle, prepare, and/or serve products or meals containing donated foods on-site solely

for the individual recipient agency under contract.

With regard to the removal of the blanket exception for commercial food service management companies from the definition of "processor," twenty-five comments were received. All commenters supported this proposal for the reasons set forth in the preamble of the proposed rule. The Department proposed this change because of problems identified in the past when food service management companies use commercial facilities to produce items for the various school food authorities under contract.

Under the current regulations, it is often difficult to determine if donated food is used to produce meals for the appropriate recipient agency and if the value of the donated food is reflected in a reduction of the food service management companies' fees to the recipient agencies. Because these companies are exempt from the processing regulations, there is little the distributing agency or recipient agency can do to monitor commodity inventories. Based on the reasons set forth in the preamble to the proposed rule and the overwhelming response from commenters in favor of the proposal, the blanket exclusion of food service management companies from the State processing regulations is eliminated from the section 250.3 definition of "processor" and § 250.30(a).

Thirty-three comments were received regarding the proposed change to the definition of "processor" to exempt any commercial enterprises which handle, prepare and/or serve products or meals containing donated foods on-site solely for the individual recipient agency under contract. Thirty-two commenters were opposed to this change, primarily as it applied to recipient agencies. Of this number, twenty-five commenters believed that all recipient agencies providing meals to other recipient agencies, whether on-site or off-site, should be exempt from the processor requirements of Part 250. Several commenters stated that the use of commodities could be monitored satisfactorily through existing food distribution review standards. Another commenter stated that recipient agencies should be exempt from this requirement if they provide for accountability and value pass-through for the donated food. This commenter stated that this could be accomplished by ensuring that funds obtained from meals furnished to other recipient agencies are deposited into the recipient agency's food service account. Other commenters stated that the proposed rule defining a school food authority which provides meals to summer feeding programs, child and adult day care centers, senior citizens and others as a processor is not practical. One commenter stated that the definition could be corrected by adding a sentence to the definition that donated food recipient agencies which prepare their own meals on-site and prepare meals for other recipient agencies at the same location are also exempt from this definition. One commenter stated that schools and child care centers should not be classified as commercial food service management companies if they are eligible for participation as recipient agencies in child nutrition programs.

The Department believes that many of the commenters' responses were based on the discussion in the preamble of the proposed rule which dealt with situations in which one recipient agency prepares meals for another recipient agency. A recipient agency which prepares meals for other recipient agencies is a food service management company under the definition in § 250.3. The preamble stated that the Department believes that where a nonprofit recipient agency, such as a school food authority, prepares products or meals containing donated foods for more than one recipient agency under more than one contract in the same facility or prepares products or meals for any one recipient agency off-site, that recipient agency is operating as a commercial food service management company and must comply with the processing provisions of Part 250 pursuant to the proposed changes to the definition of "processor" in § 250.3. The majority of the commenters stated that recipient agencies that prepare meals for other recipient agencies should be exempt from being defined as a processor.

Based on the concerns raised by the commenters, however, the definition of "processor" in § 250.3 of this final rule is amended to provide that recipient agencies which prepare products or meals containing donated foods for more than one recipient agency under more that one contract in the same facility or prepare products or meals for any one recipient agency off-site are excluded from the definition of "processor" if the recipient agency preparing products or meals can provide accountability for any donated foods received from another recipient agency in accordance with § 250.16 of the Food Distribution Program regulations and any funds received as payment for preparing products or meals shall be deposited in the meal account of the recipient agency preparing the products or meals.

Fee-for-Service

Section 250.3 of the proposed rule would define the term "fee-for-service" and delete the obsolete definition of "processing fee". Sections 250.30 (d) and (e) of the proposed rule would be reorganized to clarify refund, discount, hybrid and alternate value pass-through systems and to incorporate procedures for billing fee-for-service end products. Additionally, under § 250.30(c)(4)(viii)(D) of the proposed rule the processing contract would require those processors who wished to give credit for by-products via a reduction in the fee-for-service price to identify in the contract the specific dollar value amount reflected in the lowered price. Under § 250.30(e)(3) of the proposed rule, end products containing meat or poultry, together with any other donated food, would be prohibited from being delivered and sold to recipient agencies through distributors under fee-for-service contracts. The proposed rule would allow end products containing meat or poultry and additional ingredients which are not donated foods, to be sold to recipient agencies through distributors under fee-for-service contracts. The proposed rule would also permit end products containing meat or poultry, together with other donated food sold directly to recipient agencies by the processor, to be sold under fee-for-service contracts. FCS was particularly interested in comments and recommendations regarding the impact this proposal would have on any products which were manufactured using a combination of meat and poultry and other donated food and sold through distributors and possible alternatives to the proposed rule on this point. A total of fifteen comments was received on the above proposals.

Eight commenters responded to the proposed definition of "fee-for-service." Four of these commenters agreed with the definition as it was proposed. The remaining four commenters stated that the definition needed to be expanded. Three of the commenters in favor of expansion stated that the fee-for-service price and the free on board (FOB) plant price are the same prices and this should be reflected in the final rule. They stated that the FOB price is the actual cost of producing the end product, and that this price should be the same for all States; the only difference in price would be the cost of transportation to deliver the finished end products back to each State. These same commenters said that this concept

would mean that each processor would only have to prepare one end product data schedule for the entire nation. This action would make the idea of a clearinghouse for end product data schedules become a reality. The other commenter wanted the definition of fee-for-service expanded to clearly state that it is a method of payment for processing services and is an alternative to a value pass-through system, in addition to being the price representing the processor's cost of ingredients, packaging, and overhead.

The Department disagrees with the commenters that stated that the FOB price and the fee-for-service price represent the same figures. The FOB price represents the processor's cost of producing an item prior to shipment and delivery. FOB pricing includes the cost of *all* ingredients used in the manufacture of the product; the price reduction for donated food is not reflected in the FOB price. Fee-for-service, on the other hand, represents the cost of ingredients (other than donated food) labor, packaging, overhead, and other costs incurred in the conversion of the donated food into the specified end product. The net case price (the FOB price minus the commodity discount or refund for the donated food) and fee-for-service are equivalent prices. The Department believes that the definition of fee-for-service is correct as written in the proposed rule, and therefore, the definition is adopted without change in the final rule.

Four comments, all in favor, were received in response to section 250.30(c)(4)(viii)(D) of the proposed rule which would require the value credits of any by-products to be listed on the end product data schedule. Two of these commenters stated that they currently require this information to be part of the processing agreement. This provision is adopted without change in the final rule.

Only one comment, which was favorable, was received on section 250.30(e)(1)(iv) of the proposed rule which would establish new fee-for-service billing procedures. Distributing agencies have been using the proposed fee-for-service billing procedures for a number of years without problem pursuant to a policy memo dated March 22, 1989. Therefore, this final rule contains these procedures as proposed.

Two commenters were in favor of section 250.30(e)(3) of the proposed rule which would restrict the sale of end products containing both substitutable and non-substitutable (meat and/or poultry) donated food through distributors to either the refund, hybrid, or alternate value pass-through system and nine commenters were opposed. Those who were opposed to the proposal wanted to have the option to approve the sale of end products containing both substitutable and non-substitutable donated food under fee-for-service arrangements. Additionally, several commenters were opposed to the use of the term "sold" in section 250.30(e)(3) of the proposed rule in regard to end products being "sold" to recipient agencies through distributors. They stated that fee-for-service end products should be delivered but not *sold* to a distributor. One commenter stated that the word "sold" implied that any quantity of end product can be purchased by any recipient agency. That commenter further said that this is in contrast to the actual availability of a commodity and the allocation process that is associated with non-substitutable commodities that is used by FCS and distributing agencies.

Four comments were received on the impact that the proposal would make on end products manufactured from both substitutable and non-substitutable donated food and delivered through distributors. However, only one commenter provided a possible alternative to the proposed rule. That commenter stated that since distributing agencies, and ultimately recipient agencies, receive specific allocations of meat and poultry, the quantity of meat and poultry made available to a processor should be pre-assigned, based on a fair share apportionment and the recipient agency's choice. The pre-assigned end products may then be returned to the recipient agency through a distributor. This fee-for-service billing process through a distributor for all end products containing meat or poultry which are sold through a distributor would be accomplished by either: 1) a dual billing system through which the recipient agency is billed by the processor for the fee-for-service and the distributor bills for the storage and delivery of end products or 2) a system through which the processor bills separately for the fee-for-service and the distributor's storage and delivery charges. If these end products should also contain substitutable foods, that portion of the value pass-through could be handled as a refund or discount, indicated on the processor's invoice. Both types of information could be shown on the end product data schedule. The other three commenters pointed out the impact that the proposal would have without proposing alternatives. Their comments are as follows: 1) if the proposed rule results in prohibiting end products containing protein from being sold via a distributor, unless specified by a value pass-through system, it could result in processors leaving the program; 2) this proposed change may result in meat and poultry processors choosing not to utilize donated flour, oil, or other donated foods because they would be required to choose a value pass-through system other than fee-for-service; 3) the use of fee-for-service is necessary in the production of end products made with donated meat and poultry because of the difficulty in replacing the donated product and the prohibition against substitution; and 4) it is uncertain as to how the use of a refund or discount system instead of a fee-for-service could assure that there was no substitution of commercial food for non-substitutable donated food. Due to the concerns raised by the commenters opposed to the proposal, section 250.30(e)(3) of the proposed rule will not be adopted in the final rule, and processing contracts may continue to be made under fee-for-service arrangements when such end products are delivered and sold through distributors, regardless of whether they are manufactured with both substitutable and non-substitutable donated foods.

Contract Extension

Under sections 250.30(c)(1) and 252.4(b) of the proposed rule, processing contracts would continue to be required to terminate on June 30 of each year; however, contracting agencies (or FCS in the case of NCP) would be given the option of extending contracts for two 1-year periods. Section 250.30(c)(1) of the proposed rule would also require that any changed information be updated before any contract extension is granted, including pricing and yield information, bonding information, and the signature page. Furthermore, section 250.30(c)(1) of the proposed rule would provide that contracts could be extended only if the processor performed satisfactorily during the previous year, submitted the required annual reconciliation reports and had its certified public accountant (CPA) audit report closed.

A total of eighteen commenters responded to this proposal. Eleven commenters supported the provision as proposed. One commenter supported the option of two 1-year extensions, but added that requiring processors to submit the annual reconciliation report and requiring the closure of the CPA audit report as conditions for contract extension are not workable due to the submission and resolution time frames associated with these reports. Another

commenter supported the option of two 1-year extensions but stated that the annual reconciliation reports should be eliminated as a condition since the proposal for submission of the monthly performance report with year-to-date totals would serve the same purpose. Four commenters were in favor of contract extension but recommended four 1-year extensions to make processing contract extensions consistent with the food service management company contract duration requirements under 7 CFR Part 210. Three of these commenters also recommended that bids should be separate and distinct from the processing agreement and not be subject to automatic renewal. Finally, one commenter stated that contract extensions would not result in reduced paperwork because distributing agencies would have to maintain separate active contract files for each year of the contract. This commenter added that if there were any changes from the original contract, the distributing agency would need to issue additional amendments.

The Department continues to believe sections 250.30(c)(1) and 252.4(b) of the proposed rule will reduce paperwork, facilitate contract approval, and expedite the arrangement of early commodity shipments directly to processors. Based on the comments on section 250.30(c)(1) of the proposed rule, however, the Department recognizes that the time frames for the submission of certain reports, such as the annual reconciliation report or closure of the CPA audit report, cannot practically be conditions for contract extension. Annual reconciliation reports are not due to be submitted to the distributing agencies until after the new contract year has begun. CPA audit reports are due prior to extending a contract; however, the audit might not be closed at the time of contract extension. Typically, distributing agencies begin negotiating contracts for the upcoming contract year in March or April. Because distributing agencies need to have the most recent data available to them in determining whether a processing contract should be extended, this rule will require that distributing agencies ensure that any changed information must be updated before any contract extension is granted, including but not limited to pricing and yield information value, bonding information, and signature page. The distributing agency also must ensure that all required reports and any corrections to reports that are due up to the time that contract extension occurs have been submitted by the processor.

Accordingly, this final rule adopts section 250.30(c)(1) of the proposed State processing regulations and section 252.4(b) of the proposed NCP regulations without change, except that section 250.30(c)(1) is modified to provide that as a condition of extension, the processor must, in addition to performing satisfactorily during the previous year, submit all required reports and any corrections to such reports up to the time that contract extension occurs and submit its CPA audit report.

Requirements for Processing Contracts

Section 250.30(c)(4)(ii) of the proposed State processing regulations and section 252.4(c)(1) of the NCP regulations would eliminate the requirement that the free on board (FOB) plant price be included as part of the State processing and NCP contracts. In lieu of the FOB price, the proposed rule would permit processors to provide any pricing information, so long as the processor thoroughly explained what this additional pricing information represented. The processor, however, under section 250.30(c)(4)(ii) of the proposed rule would also be required to include the contract value of each USDA commodity and where processing was to be performed only on a fee-for-service basis, as defined in the rule, the actual fee would be listed. Additionally, section 250.30(c)(4)(ii) of the proposed rule would require that information pertaining to yields and pricing of end products be listed on separate pages of the contract.

A total of sixteen comments was received on this proposal. In response to the proposal to eliminate the FOB price from the end product data schedule, six commenters agreed that it should be removed from the regulations and four commenters stated that it should be retained. Commenters who supported the elimination of the FOB price stated that there is a great deal of confusion regarding what the FOB price represents. One commenter stated that FOB prices are misleading and believed it would be better to have a processor spell out the pricing mechanism as clearly as possible at the State contract level. Two commenters proposed eliminating all pricing information from the end product data schedule. One of these commenters stated that the FOB price causes confusion among recipient agencies and also reveals sensitive information to a company's competitors should they obtain copies of the end product data schedule. The other commenter stated that the FOB price is irrelevant and unauditable and there is no accurate means to compare price information on the end product data schedule to actual price paid by the recipient agency. This same commenter said that the majority of recipient agencies arrange for purchases through a bid process, and that the competitive market will control the costs.

Additionally, this commenter stated that it would be better to eliminate the FOB price entirely and satisfy the audit trail through: 1) payment of a refund which reflects the contract value; 2) documentation that the distributor reduced the commercial price of the end product by the full contract value under the hybrid system; or 3) that the normal commercial price has been discounted by the full contract value for sales made under the direct discount system. Another commenter stated that only value pass-through information should be included on the end product data schedule and that full pricing information, such as delivered price, should be included as a separate attachment to the agreement. Three commenters supported the current requirement and indicated that delivery costs should also be identified on the end product data schedule. Two commenters recommended that FOB price and fee-for-service definitions should be clarified so that they are compatible.

FCS is aware that pricing information supplied by processors often represents prices other than the FOB price. Many processors use delivered price to a State warehouse, highest price that can be charged to a recipient agency, delivered price to a recipient agency, etc. Based on this and the comments received, the Department believes that the requirement that FOB price be included as part of the State and NCP processing contracts should be eliminated. However, because the Department realizes that pricing information is very important to recipient agencies, the Department also believes that processors should provide any pricing information requested by the contracting agency, along with a thorough explanation of what this information represents.

Regarding the proposal to place price and yield data on separate pages, four commenters were in favor of this idea and seven were opposed. Those in favor stated that a two-part system could result in reduced paperwork and that processors would not be required to submit new yield schedules for contract renewal or pricing changes. Another commenter stated that if preparing a separate sheet for yields will lead to a uniform commodity yield allowances and these are clearly related to end

product, then the proposed changes may be desirable. That commenter further stated that the yield data should be cross-referenced on the end product data schedule. Those commenters opposed to the proposed requirement stated that placing price and yield data on separate pages doubles the paperwork required, not reduces it. Several commenters stated that most processors have end product data schedules computerized, so it would be easier and more efficient to create revised yield and pricing information on a single sheet. One commenter stated that the specific reference to a two-part form should be removed from the regulations, but its removal would not prevent the use of a two-part form if this is preferred by the processor and the distributing agency. Another commenter opposed the proposal to have yield and pricing information on separate pages of the contract and preferred to have the gross and net pricing columns eliminated from the current end product data schedule and leave the rest of the end product data schedule as it currently exists.

The Department proposed placing pricing and yield data on separate pages because it was thought that this would eliminate the need to update all end product data schedules when changes become necessary. However, the Department finds the arguments made by the commenters opposed to the proposal persuasive, in that placing the information on separate pages would increase the workload and paperwork for processors and distributing agencies. Additionally, with the increased use of computer technology, it would be easier to update the end product data schedule rather than requiring separate pages.

This final rule adopts § 250.30(c)(4)(ii) of the proposed State processing regulations and § 252.4(c)(1) of the proposed NCP regulations without change, except that the proposal to require that price and yield data be placed on separate pages is not incorporated into § 250.30(c)(4)(ii) of the final rule.

Liquidated Damages

Section 250.30(c)(4)(iv)(B) of the current State processing regulations provides for termination of the processing contract when there has been noncompliance with its terms and conditions by the contracting agency or the processor. However, it has been the Department's experience that there have been circumstances where termination of processing contracts would seriously affect the ability of recipient agencies to purchase processed end products. Rather than terminating contracts for non-compliance with the contract provisions, the Department believes that there could be some middle ground established where instances of non-compliance could be better handled by means of assessing damages against the non-performing party of the contract under the State processing program. To accomplish this, the proposed rule requested comments from interested parties on ways to handle instances of program violations, short of contract termination. Commenters were requested to identify areas of non-compliance that have created the greatest problems in the past as well as the type and amounts of reasonable damages for non-compliance with specific provisions of the processing agreement to be applied against a processor. These liquidated damages were to be based on the severity and nature of the program violations identified, in order to ensure consistent application of the requirement. Additionally, comments were solicited regarding the incorporation of the liquidated damages provision of the NCP agreement into the NCP regulations.

Twelve comments were received in response to this proposal. Ten commenters were opposed to the inclusion of a liquidated damages provision in the State processing and the NCP regulations. Many of these commenters stated that while the concept of establishing conditions of non-compliance in lieu of contract termination could be useful as an incentive for processors to adhere to contract requirements, addressing these conditions in Federal regulations is not appropriate. Rather than include such provisions in Federal regulations, six commenters stated that distributing agencies should be encouraged to identify liquidated damages assessments in a special provisions article of the processing agreement. Three commenters expressed concern that inclusion of a liquidated damages provision could deter processors from participating in the processing programs. Three commenters expressed concern that State laws are too varied and that such provisions may invoke unnecessary or excessive charges against processors, which could ultimately result in higher fees charged to recipient agencies. One commenter stated that most instances of non-compliance fall into the area of recordkeeping problems, such as failure to submit reports in a timely manner or to maintain production records. The commenter stated that the best way to handle such occurrences is for the distributing agency to work directly with the processor to resolve these problems rather than to impose fines. Two commenters stated that adding a liquidated damages provision to the NCP regulations would create undue hardship on a single processor with contracts in multiple states. Three commenters stated that there was no need for a liquidated damages provision because the bond was sufficient to cover the loss of any donated food. However, a different view point toward the bond coverage was expressed by two commenters who were in favor of including a liquidated damages provision. One of these commenters stated that since the bond only covers loss of inventory or loss of commodity, a liquidated damages provision would be appropriate if very carefully written so that good processors would not be deterred from program participation and that such a provision could not be punitive in nature. The other commenter in favor of a liquidated damages provision stated that while performance bonds do provide some relief, they do not adequately compensate the State or the recipient agencies for the additional administrative work which can result when a processor violates the provisions of the processing regulations and agreement provisions. This commenter stated that a well-constructed liquidated damages provision may enable the distributing agency to collect penalties which could be used to offset the administrative work that is generated by such violations.

While the Department recognizes the need to have a means of addressing non-compliance with program and contract provisions, other than contract termination, the majority of the commenters' recommendations stated that it would be inappropriate for the Department to develop a liquidated damages provision that would be applicable to all distributing agencies nationwide. Based on these comments, the Department believes that handling such instances of non-compliance is best left to the discretion of the distributing agencies. Therefore, this rule does not require that a liquidated damages provision be included in the State processing contract. However, as a means of ensuring compliance with all requirements of the processing contract short of contract termination, the Department strongly encourages the inclusion of a liquidated damages provision or other similar provision in the processing contract. As discussed in the preamble to the proposed State processing regulations, there are

circumstances in which termination of processing contracts would seriously affect the ability of recipient agencies to purchase processed end products, and thus, termination is not always a practical option for less significant contract noncompliance. It has been the Department's experience in NCP that a liquidated damages provision has been a useful method of ensuring full compliance with the terms of the contract. The Department will continue to appraise the use and effectiveness of liquidated damage provisions or other intermediate alternatives to contract termination by distributing agencies and will address this issue in the future if warranted.

Since FCS serves as the distributing agency in the NCP Program, and because this provision has been successfully applied in the past to address instances of non-compliance, the liquidated damages article that is currently part of the NCP agreement will remain unchanged. The Department plans to raise this issue with the distributing agencies participating in the State processing program to determine whether it is appropriate to incorporate a similar provision in State processing contracts.

Alternate Value Pass-Through Systems

Section 250.30(d)(1)(iii) of the proposed State processing regulations and section 252.4(c)(4)(iii) of the proposed NCP regulations would permit FCS to take the paperwork and resource burden associated with using the alternate value pass-through systems into consideration when determining whether an alternate system should be approved. The proposed rule would also reserve to FCS the right to deny approval of systems which are labor-intensive and provide no greater accountability than systems specifically described for use by the current regulations.

A total of twelve comments was received on this proposal, with ten commenters being in favor of the provision, one commenter being opposed, and one commenter possibly misunderstanding the proposed provision. Six of the ten commenters supported the provision exactly as proposed, while the remaining four made additional suggestions for inclusion in the provision. The additional suggestions were as follows: 1) the Department must develop specific objective guidelines to follow when reviewing alternate value pass-through systems to ensure that all systems are evaluated under the same criteria; 2) the Department must consider the burden an alternate system would place on smaller processors, since they would probably have to use that system in a State where it had been approved; and 3) any alternate value pass-through system should be piloted for one year before receiving full approval and reviewed every year thereafter to ensure that it is an accountable and efficient system. The Department believes that one commenter may have misunderstood the provisions, since concern was expressed that the Department was proposing to eliminate the option of allowing alternate value pass-through systems. Finally, the one commenter who was opposed to the provision stated that there was no need for this proposal, since the Department already has the authority to approve or deny alternative value pass-through systems.

The Department supports the continued use of alternate value pass-through systems with FCS approval under the State processing and NCP Programs. The Department also supports the proposal that the paperwork and resource burden associated with an alternate value pass-through system are extremely important factors that must be taken into consideration when determining whether an alternate system should be approved. The Department believes that distributing agencies, recipient agencies, and processors do not have the time or resources to dedicate to alternate systems that are more labor-intensive and provide no greater accountability than systems currently described for use by the regulations.

Furthermore, since there has been little interest expressed by distributing agencies in using alternate value pass-through systems, the Department does not believe it would be practical to develop specific guidelines for use in evaluating such systems. Historically, there have only been three requests to use alternate systems. While two of these systems were approved for use in the State processing program, only one is currently in use. Instead, the Department finds that it is more effective to evaluate all requests to use alternate system value pass-through systems on a case-by-case basis, making sure that, at a minimum, the alternate system under consideration complies with the verification requirements contained in section 250.19(b)(2) of the Food Distribution Program regulations.

This final rule adopts section 250.30(d)(1)(iii) of the proposed State processing regulations and section 252.4(c)(4)(iii) of the NCP regulations without change.

Invoice Information

The proposed rule would eliminate the requirement under sections 250.30(d)(2) and 250.30(e)(2) of the State processing regulations and section 252.4(c)(4) of the NCP regulations that processor/distributor invoices must indicate the amount of the discount included or refund due the recipient agencies for the end products purchased, regardless of the type of value pass-through system used. Sections 250.30.(d)(3) and 250.30(e)(2) of the proposed rule would also require processors to provide pricing information summaries to contracting agencies. Contracting agencies would be required to provide these pricing information summaries to recipient agencies as soon as possible after contract approval by the distributing agency. If any pricing information changed during the contract year, processors would be required to provide updated pricing information summaries to the contracting agencies 30 days prior to the effective date. The contracting agencies, in turn, would be required to provide the updated summaries to the recipient agencies. Section 250.30(c)(4)(xvii) of the proposed State processing regulations would create the affirmative duty of the processor to provide these pricing summaries and updated pricing summaries. Under the NCP program, section 252.4(c)(4) of the proposed rule would require processors to provide pricing information summaries directly to the recipient agencies as soon as possible after FCS contract approval. Also, section 252.4(c)(4) of the proposed rule would require that if any pricing information changes during the contract year, the processor must provide updated pricing information summaries to FCS and the recipient agencies 30 days prior to the effective date of such change.

Eight commenters were in favor of eliminating the requirement that the processor ensure that invoices clearly show the discount included or refund due to the recipient agencies for the end product purchased. Commenters provided two main reasons for wishing to eliminate this requirement: 1) it has proved very difficult to require distributors to identify refunds due or discounts given on the invoices and 2) the requirement had become somewhat obsolete because FCS policy currently allows processors/distributors to provide pricing summaries to recipient agencies in lieu of providing the pricing information on invoices. Five commenters were opposed to the proposal and indicated that they wanted to retain the pricing information on the

invoices because the invoice is the best place to alert recipient agencies that a refund is due or a discount has been given. One commenter added that many processors who utilize the refund system provide a pre-printed rebate application which lists the commodity value for each end product. Two commenters indicated that the proposed rule would have little, if any, effect on their operations. Only one comment was received on the changes proposed for the NCP Program. That commenter endorsed the proposed provisions in section 252.4(c)(4).

In the past, several processors and distributors have expressed concern to FCS about the added cost of redesigning and reprinting invoices in order to accommodate the requirement in the current regulations that the processor/distributor invoices clearly indicate the discount included or the refund due on end products. In response to the growing concern, on May 2, 1989, FCS issued a policy memorandum which allowed processors or distributors to provide recipient agencies a fact sheet, which clearly identified that the processed end products are made from commodities and indicates the amount of refund or discount due eligible recipient agencies for such purchases. The Department believes it is appropriate to incorporate this existing policy into the final rule. These pricing information summaries need only consist of information such as the product code, gross price, refund due or discount given and net price. These summaries, as well as any updates to the summaries, must be prepared by processors and furnished to recipient agencies by either the processor or the distributing agency.

Based on the above, this final rule adopts sections 250.30(c)(4)(xvii), 250.30(d)(3) and 250.30(e)(2)of the proposed State processing regulations and section 252.4(c)(4) of the proposed NCP regulations without change.

Substitution of Donated Food

Section 250.30(f)(1)(i), of the proposed rule would allow the substitution of commercial food for those donated foods specifically listed as substitutable in the current regulations without requesting prior approval from the distributing agency. Additionally, sections 250.30(f)(1)(iii), 250.30(f)(2), and 250.30(f)(4) of the proposed State processing regulations include the following provisions: 1) Processors may continue to request approval from FCS to substitute other commercial foods (except meat and poultry), although without the requirement that requests may be made only when the distributing agency's inability to maintain the necessary inventory of donated food at the processing plant would disrupt the production of end products and in all cases in which a State processing contract permits substitution, provided that processors must provide documentation sufficient to substantiate that they continue to acquire sufficient substitutable commercial foods necessary to meet the 100 percent yield requirement; 2) Distributing agencies can withhold deliveries of donated food from processors which have reduced their level of commercial production because of participation in the State processing program; and 3) Authorization to substitute commercial foods for donated foods not specifically listed applies only for the duration of all contracts currently entered into by the processor. Sections 252.3(c) and 252.4(c)(7) of the proposed rule would similarly amend the NCP regulations.

The Department received sixteen comments on this proposal. All commenters concurred that processors should not need written approval from the distributing agency to substitute those donated foods listed as substitutable in the regulations with commercial foods. However, two commenters stated that the Department should consider making all donated foods substitutable and one commenter stated that all donated food, except for meat and poultry, should be considered as substitutable. Those commenters who favored a total or almost total substitution of all donated foods provided conditions under which substitution should be permitted: 1) USDA's Food Safety Inspection Service inspectors and/or USDA's Agricultural Marketing Service graders verify that the commercial food being substituted is of equal or better quality and is of the same generic identity as the donated food; 2) the processor must provide the specifications of the commercial food used to substitute for donated food, along with a certification that the substituted foods are of equal or better quality; and 3) the processor must report all substitution on the monthly performance report to the distributing agency.

Three comments were received in response to the proposal which would permit distributing agencies to withhold deliveries of donated food from processors who have reduced their level of commercial production because of participation in the State processing program. These commenters made it clear that they believe distributing agencies do not have access to a processor's records on the production of commercial end products in order to determine whether withholding donated food is appropriate. One processor expressed concern that the documentation necessary to substantiate that the processor acquires sufficient amounts of substitutable donated food would increase the overall workload of the distributing agency staff.

The Department supports the commenters who recommended that all donated foods currently listed in the regulations be considered as substitutable with commercial foods without prior approval from the distributing agency. However, the Department does not agree that all donated foods should be considered as substitutable. The Department purchases high quality products which must meet strict specifications for recipient agencies to use in their meal service operations. Because the quality of the non-listed donated foods, especially meat and poultry, can vary tremendously, which will ultimately affect the quality of the end product, the Department believes it is necessary to eliminate any possibility that inferior commercial product could be substituted for the high quality donated foods provided by USDA. Additionally, the argument that Federal inspectors or graders could ensure the quality of any commercial product being substituted for donated food is not reasonable. Federal inspectors or graders are only present in processing plants that convert donated meat or poultry into finished end products; they are not required to be on-site in bakeries or processing plants which only handle fruits, vegetables and/or grains. The additional costs for obtaining the services of inspectors or graders to perform these services would be extremely high. Additionally, based on the comments received, it is apparent that commenters do not favor requiring distributing agencies to monitor the level of the processors's commercial production so they would be permitted to withhold deliveries of donated food from processors which have reduced their level of commercial production because of participation in the State processing program.

This final rule adopts sections 250.30(f)(1)(i) and 250.30(f)(4) of the proposed State processing regulations without change. To alleviate the commenters' concerns, but to maintain the necessary program accountability, section 250.30(f)(1)(iii) of this final rule will require the processor to be responsible for maintaining documentation that normal commercial production has not been reduced as the result of participation in the processing

program. To conform to the change in section 250.30(f)(1)(iii), this final rule also adds a new paragraph to section 250.30(c)(4)(xviii) of this final rule. This final rule adopts section 250.30(f)(2) of the proposed State processing regulations as proposed with a minor modification for clarification. Additionally, this final rule adopts sections 252.3(c) and 252.4(c)(7) of the proposed NCP regulations without change.

Time Frames for Processors to Pay Refunds

Section 250.30(k)(3) of the proposed State processing regulations would require processors to make refund payments to recipient agencies within 30 days after receipt of any refund application. Additionally, sections 250.30(k)(1) and 252.4(c)(4)(i)(B) of the proposed rule would also permit recipient agencies to file refund applications on a Federal fiscal quarterly basis, if the total anticipated refund due for all purchases from that processor during the quarter is 25 dollars or less. Furthermore, processors would be permitted to group together refund applications for a single recipient agency on a Federal fiscal basis if the total anticipated refund due that recipient agency during the quarter is 25 dollars or less. These quarterly options of batching of refund applications and refund payments would only be permitted between a recipient agency and a processor, not between a distributor and a processor.

A total of 16 comments was received on this proposal. Regarding the 30-day time frame for processors to pay refunds, twelve commenters stated that they agreed with this concept and three commenters were opposed. Many of those commenters that supported the 30-day time frame did so for the following reasons: 1) a 30-day time frame is more realistic and logical than the 10-day time frame; 2) a 30-day time frame conforms to time frames used in normal business practices; 3) a 10-day time frame is very difficult to meet because of limited staff resources; and 4) a 30-day time frame is reasonable because a refund payment will usually be received by the recipient agency before the recipient agency's payment for the end products reaches the processor. The three commenters who expressed opposition to the 30-day time frame stated that it allows the processor to use school food authority money for an excessive period of time. One processor also stated that the current 10-day time frame is more appropriate because it is the key to acceptance of the refund system by recipient agencies.

Fourteen comments were received regarding quarterly batching of refund applications by recipient agencies and twelve comments were received on quarterly batching of refund payments by processors. While all comments received on the concept of quarterly batching were favorable, three commenters made the following suggestions: 1) the threshold should be increased from 25 dollars to 100 dollars; 2) there should be no minimum dollar threshold associated with quarterly submission of refund applications by recipient agencies; 3) recipient agencies should have an option to file refund applications monthly or quarterly and processors must provide refunds within 30 days of receipt of the refund application; and 4) to accommodate extenuating circumstances, distributing agencies should permit recipient agencies to submit refund applications and processors to provide refund payments outside of the quarterly time frames.

Based on the comments received and the reasons set forth above, this final rule adopts sections 250.30(k)(1) and 250.30(k)(3) of the proposed State processing and section 252.4(c)(4)(i)(B) of the proposed NCP regulations without change.

Refund Applications/Performance Reports

Section 250.30(k)(1) of the proposed State processing regulations would eliminate the requirement that recipient agencies must forward copies of the refund applications to distributing agencies at the same time they submit the refund applications to the processor. Section 250.30(m)(1) of the proposed rule would also amend the State processing regulations to add the following requirements: 1) that monthly performance reports be postmarked no later than the final day of the month following the reporting period and the final performance report for the contract period be postmarked no later than 60 days from the close of the contract year; and 2) that performance reports must be submitted monthly unless a processor made no sales and had no inventory during that month. Finally, section 250.17 of the proposed State processing regulations would provide that where performance reports are electronically transmitted to the distributing agency by means of a facsimile machine, the date printed by the facsimile machine on the facsimile copy may serve as the postmark. The Department received seventeen comments on this section of the proposed rule.

Ten comments were received on eliminating the requirement that recipient agencies submit copies of the refund applications to the distributing agencies. All commenters were in favor of the proposal, stating that the elimination of this dual reporting requirement would reduce the paperwork burden. Since section 250.30(k)(3) of the current State processing regulations also requires processors to send copies of the refund applications and refund payments to the distributing agency as part of the monthly performance report, the requirement for recipient agencies to also send the refund applications to the distributing agencies was viewed as duplicative.

Ten comments were received regarding the use of the postmark date to track the timing for submission of the monthly performance reports. Nine commenters were in favor of the proposed change and one opposed. Those in favor stated that by placing this requirement in the regulations, any uncertainties about the required time frames for submission of the performance reports would be clarified. The one commenter opposed to this provision stated that upon receipt, each performance report is stamp-dated when received and that the envelope containing the postmark is discarded, because it is not practical to keep mailing envelopes on file. The Department wishes to clarify that the intent of this requirement was not for distributing agencies to maintain mailing envelopes. Rather, distributing agencies should record the postmark date that is on the mailing envelope and determine whether the performance report has been submitted within the required time frame. All comments received on the proposal that the date printed on a report transmitted by facsimile machine may serve as the postmark date were favorable; however, one commenter questioned whether it is necessary to include such a policy in regulations. The Department believes that it is important to state within the regulations that the date printed by the facsimile machine may serve as the postmark date, since this method of submitting performance reports is becoming more commonplace.

Commenters were generally opposed to the proposed requirement that processors would not have to submit performance reports for those months in which no sales were made and where processors had no inventory. Fifteen comments were received on this provision. Four commenters were in complete agreement, one commenter was in favor but with restrictions, and ten commenters opposed. Those in complete agreement with the proposal

did not provide further explanation for their support. However, the one commenter in partial agreement with the proposal recommended that the requirement be eliminated when processors have no inventory *and* no sales activity, but stipulated that upon arrival of any inventory or initiation of any approved sales from that period on, monthly performance reports be required. Those commenters who wished to require monthly performance reports for each month the processing contract is in effect provided the following reasons: (1) Distributing agencies often do not know if a processor has inventory or has made any sales during the month until the monthly report is received; (2) it would be difficult to know if a report was required, if a report was submitted but lost in the mail, if the processor forgot to submit the report, or if the processor purposely did not send the report; (3) distributing agencies may not know the status of a processor's inventory because incoming direct shipments of donated food may not arrive when anticipated or product can be backhauled without the distributing agency's knowledge; (4) monthly reports must be maintained to establish an audit trail; (5) auditable records should run consecutively without breaks in months; and (6) if the Department eliminates the annual reconciliation report, distributing agencies, FCS and auditors must have the monthly performance reports for each month the processing agreement is in effect in order to verify all activities that occurred during the agreement period. One commenter added that processors should always have sales activity each month because the current processing regulations discourage processors from entering into agreements if their activity will be limited. The Department finds the commenters' arguments persuasive that monthly performance reports be required for each month that the processing agreement is in effect.

Based on the comments received and the above reasons, this final rule adopts sections 250.17(f), 250.30(k)(1) and 250.30(m)(1) of the proposed State processing regulations without change, except that the proposal in section 250.30(m)(1) that processors would not be required to submit performance reports for those months in which no sales were made and where processors had no inventory is not included in this final rule.

List of Contracting Agencies

As part of the performance report requirements under section 250.30(m) of the current State processing regulations, processors are required to submit to the distributing agency a list of all contracting agencies and their locations with which the processor has processing contracts. Because the Department believes that requiring this list every month is unnecessary and duplicative, the proposed rule would eliminate this list.

Additionally, in order to ensure that sales are only made to eligible recipient agencies with approved processing contracts, § 250.30(c)(4)(xv) of the current regulations requires that as part of the processing contract, the contracting agency must provide the processor with a list of all recipient agencies eligible to purchase end products under the contract. However, the current rule implies, but does not explicitly require, the contracting agency to provide updates to the list of recipient agencies for any changes that occur during the contract period. Therefore, to clarify the regulation, § 250.30(c)(4)(xv) of the proposed rule would require the contracting agency to provide updates to the list of recipient agencies for any changes which occur during the contract period.

Sixteen comments were received on these two proposals, all in favor of the provisions as proposed. Accordingly, this final rule adopts §§ 250.30(c)(4)(xv) and 250.30(m) of the proposed State processing regulations without change.

Quarterly Processing Activity Reports and Annual Reconciliation Reports

The proposed rule provided for major revisions in the areas of quarterly inventory reports, the annual reconciliation report and the monthly performance reports. Sections 250.30(m)(1), 250.30(n) (3) and (4), and 250.30(o)(1) proposed to amend the State processing regulations as follows: 1) the quarterly inventory reports and the annual reconciliation report would be replaced with the monthly performance reports with year-to-date totals; 2) distributing agencies would be required to forward to the FCS Regional Office the monthly performance report with year-to-date totals provided by the processor for the last month of each Federal fiscal quarter; 3) when forwarding these monthly performance reports, they would be required to be postmarked no later than 60 days following the close of each Federal fiscal quarter, except that such reports must be postmarked no later than 90 days following the close of the contract period; 4) when a processor submitted no monthly performance report for the last month of a Federal fiscal quarter, distributing agencies would be required to submit to the FCS Regional Office the last monthly performance report received from the processor for that Federal fiscal quarter; 5) the last monthly performance report for the contract period would serve as the annual reconciliation report; 6) distributing agencies would be required to certify the accuracy of the information contained in the final performance report; and 7) when a processor submitted no monthly performance report for the last month of the contract period, the last monthly performance report received from the processor would serve as the annual reconciliation report and this final performance report would be required to be postmarked no later than 90 days following the close of the contract period.

Seventeen comments were received on the above provisions contained in the proposed rule. Regarding the replacement of the quarterly inventory reports with the monthly performance reports, seven comments were received, four in favor and three opposed. However, based on comments received, it appears that some commenters may have misunderstood the purpose for replacing the quarterly inventory reports with the monthly performance reports with year-to-date totals. Under the current regulations, performance reports are required to contain inventory information on a monthly basis, but not on a quarterly basis. Distributing agencies are required to extract inventory information from the performance reports and compile this information on a quarterly basis for submission to the FCS Regional Office. Requiring that performance reports have year-to-date totals of inventory information would eliminate the need for distributing agency staff to prepare a quarterly inventory report. This reduces the workload of the distributing agency staff and only requires a small change in the processor's performance report format.

Furthermore, it was not the intent of the Department that distributing agencies photocopy the entire content of the performance report for submission to the FCS Regional Office. While sales activity for the month usually comprises the major part of the performance report, processors typically show inventory activity on a separate page of the monthly performance report. On the inventory summary portion of the performance report, all sales are represented by a single inventory drawdown figure which represents the cumulative total of all individual sales reported for the month. The intent of the proposed rule was for distributing agencies to send the inventory summary

portion of the December, March and June performance reports that contains the inventory information (i.e., beginning inventory, receipts for the month, transfers in and out, inventory drawdown, and ending inventory balance with year-to-date totals) to the FCS Regional Offices, and not the entire performance report.

Twelve commenters were in favor of replacing the annual reconciliation report with the last monthly performance report with year-to-date totals, and two commenters were opposed. Those in favor stated that this proposal is a positive step toward reducing paperwork, while those opposed stated it would increase paperwork because distributing agencies would be required to certify the accuracy of the performance reports. In its review of this proposal and the comments received, the Department believes this proposal will serve to reduce paperwork. Under the current regulations for annual reconciliation, processors must total donated food receipts, transfer information, sales activity, and ending inventory balance from the individual performance reports. Under the proposed rule, it would not be necessary for processors to go through previous performance reports and compute these figures, since this information will be tallied cumulatively each month. Additionally, submitting performance reports with year-to-date totals will eliminate the need for distributing agencies to compile data from the individual quarterly reports to ensure that the annual reconciliation report figures are accurate. The final performance report for the contract year, including a summary sheet of year-to-date inventory totals, will replace the annual reconciliation report formerly required in the final rule.

One commenter expressed concern that the time frames for submitting the performance reports with year-to-date totals to FCS are the same time frames currently required for submission of the quarterly inventory reports. That commenter indicated that if there were errors in the report, there would not be sufficient time for the processor to make the corrections and return the report to the distributing agency in order for the distributing agency to submit it to the FCS Regional Office on time. The Department believes that since most performance reports are computer-generated, and the calculation of the year-to-date totals would be performed by a formula placed into the computer program, there would be very few errors made. Furthermore, the Department believes that it is better to handle any errors that might be discovered on performance reports on a case-by-case basis. Distributing agencies will be required to certify that the inventory information contained in the final performance report is accurate, just as they are required to do under section 250.30(n)(4) of the current rule for the annual reconciliation report. The time frames for submission of the performance reports, as discussed earlier in this preamble, will remain the same as in the proposed rule and are clearly spelled out in the final rule under section 250.30(m)(1).

As discussed earlier in this preamble under Refund Applications/ Performance Reports, section 250.30(m)(1) of the proposed rule stated that processors are not required to submit performance reports for those months in which no sales were made and those months where processors had no inventory. As previously discussed, this provision is not included in the final rule. Therefore, the provisions in sections 250.30(n)(3) and 250.30(o)(1) of the proposed State processing regulation, which would provide that when a processor does not submit a monthly performance or inventory report for the last month of a Federal fiscal quarter, the distributing agency must forward to the FCS Regional Office the last monthly performance report received from the processor for that quarter, are not included in this final rule.

This final rule adopts sections 250.30(m)(1), 250.30(n) (3) and (4), and 250.30(o)(1) of the proposed State processing regulations without change, except as previously noted. FCS plans to develop a prototype performance report format which will be easily adaptable for processors to incorporate into existing inventory reporting programs.

This section of the proposed rule did not affect the NCP Program.

List of Subjects in 7 CFR Parts 250 and 252

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

For reasons set forth in the preamble, 7 CFR Parts 250 and 252 are amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a-1, 1859; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1762a, 1766, 3030a, 5179, 5180.

2. In § 250.3:

a. The definition of *Fee-for-service* is added in alphabetical order;

b. The definition of *Processing fee* is removed; and

c. The definition of *Processor* is revised.

The addition and revision read as follows:

§ 250.3 Definitions.

* * * * *

Fee-for-service means the price by pound or by case representing a processor's cost of ingredients (other than donated foods), labor, packaging, overhead, and other costs incurred in the conversion of the donated food into the specified end product.

* * * * *

Processor means any commercial facility which processes or repackages donated foods. However, commercial enterprises which handle, prepare and/ or serve products or meals containing donated foods on-site solely for the individual recipient agency under contract are exempt under this definition. Notwithstanding this definition, a recipient agency which prepares products or meals containing donated foods for more than one recipient agency under more than one contract in the same facility or prepares products or meals for any one recipient agency off-site shall not be a processor if the recipient agency preparing products or meals provides: (1) accountability for any donated foods received from another recipient agency consistent with § 250.16 of this part and (2) any funds received as payment for preparing products or meals shall be deposited in the non-profit meal account of the recipient agency preparing products or meals.

* * * * *

3. In § 250.17, a new paragraph (f) is added to read as follows:

§ 250.17 Reports.

* * * * *

(f) *Report transmission.* Where a report is to be postmarked by a specific date and such report is transmitted by means of a facsimile machine, the date

printed by the facsimile machine on the facsimile copy may serve as the postmark.

4. In § 250.30:

a. The last sentence of paragraph (a) is removed;

b. Paragraph (b)(2)(ii) is revised;

c. Two sentences are added between the second and third sentences of the introductory text of paragraph (c)(1), and the paragraph incorrectly designated as (c)(1)(l) is redesignated as paragraph (c)(1)(i);

d. The first sentence of paragraph (c)(4)(ii) is revised;

e. Paragraph (c)(4)(iii) is revised;

f. Paragraph (c)(4)(vii) is revised;

g. The words "and identify" are added to the end of the introductory text of paragraph (c)(4)(viii)(D);

h. Paragraph (c)(4)(xiii) is revised;

i. Paragraph (c)(4)(xv) is amended by adding the words "and provide updates for any changes which occur during the contract period" at the end of the paragraph;

j. Paragraph (c)(5) is redesignated as paragraph (c)(4)(xvi) and is further amended by adding the words "A provision that" at the beginning of the paragraph;

k. A new paragraph (c)(4)(xvii) is added;

l. A new paragraph (c)(4)(xviii) is added;

m. Paragraph (d) is revised;

n. Paragraph (e) is revised;

o. Paragraphs (f)(1)(i) and (f)(1)(iii) are revised;

p. A new sentence is added after the first sentence in paragraph (f)(2);

q. Paragraph (f)(4) is revised;

r. Paragraphs (k)(1) and (k)(3) are revised;

s. Paragraph (k)(4) is removed;

t. The first sentence of paragraph (l) is amended by adding the words "or renewed" after the word "into";

u. The introductory text of paragraph (m)(1) is revised;

v. Paragraph (m)(1)(vii) is removed and reserved;

w. The first sentence of paragraph (n)(3) is revised;

x. Paragraph (n)(4) is revised;

y. Paragraph (o)(1) is revised;

z. The introductory text of paragraph (o)(2) is amended by removing the words "reporting the information identified" and adding the words "the reporting requirements" in their place.

The revisions and additions read as follows:

§ 250.30 State processing of donated foods.

* * * * *

(b) *Permissible contractual arrangements.* * * *

(2) * * *

(ii) When selling end products through a distributor, such sales shall be in accordance with paragraph (e) of this section.

* * * * *

(c) *Requirements for processing contracts.* (1) * * * However, processing contracts may give contracting agencies the option of extending contracts for two 1-year periods, provided that any changed information must be updated before any contract extension is granted, including the information in paragraphs (c)(3), (c)(4)(ii), and (c)(4)(viii)(B) of this section. The processor must have performed to the satisfaction of the contracting agency during the previous contract year, submitted all required reports and any corrections to such reports up to the time that contract extension occurs, and submitted its certified public accountant report as required under paragraph (c)(4)(xi) of this section before the contract may be extended. * * *

* * * * *

(4) * * *

(ii) A description of each end product, the quantity of each donated food and the identification of any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), the total weight of all ingredients in the batch formula, the yield factor for each donated food, and any pricing information provided by the processor in addition to that required in paragraph (c)(4)(iii) of this section as requested by the contracting agency and a thorough explanation of what this additional pricing information represents. * * *

(iii) The contract value of each donated food to be processed and, where processing is to be performed only on a fee-for-service basis as defined in § 250.3, the fee-for-service;

* * * * *

(vii) A provision that end products containing donated foods that are not substitutable under paragraph (f) of this section shall be delivered only to eligible recipient agencies and that end products containing both substitutable and non-substitutable donated foods may be delivered and sold in accordance with the requirements of paragraph (d) and (e) of this section;

* * * * *

(xiii) A provision that the fee-for-service or value pass-through system to be used for the sale of end products to recipient agencies shall be described and be consistent with paragraphs (d) and (e) of this section.

* * * * *

(xvii) A provision that the processor shall provide pricing information summaries and updated pricing information summaries as required in paragraphs (d)(3) and (e)(2) of this section.

(xviii) A provision that the processor shall maintain documentation which demonstrates that the level of the processor's commercial production has not been reduced, as required in paragraph (f)(1)(iii) of this section.

(d) *End products sold by processors.* (1) When recipient agencies pay the processor for end products, such sales shall be under:

(i) A refund system as defined in § 250.3 and in accordance with paragraph (k) of this section; or

(ii) A discount system which provides the price of each unit of end product purchased by eligible recipient agencies to be discounted by the stated contract value of the donated foods contained therein; or

(iii) An alternative value pass-through system under which the value of the donated food contained in each unit of end product shall be passed to the recipient agency and which has been approved by FCS at the request of the distributing agency. Any alternative value pass-through system approved under this paragraph must comply with the sales verification requirements specified in § 250.19(b) of this part, or an alternative verification system approved by FCS. The Department retains the authority to inspect and review all pertinent records including records pertaining to the verification of a statistically valid sample of sales. FCS may consider the paperwork and resource burden associated with alternative value pass-through systems when considering approval and reserves the right to deny the approval of systems which are labor-intensive and provide no greater accountability than those systems permitted under paragraphs (d) and (e) of this section.

(2) When a processor delivers end products produced under a fee-for-service contract, the processor shall separately identify on the bill for the recipient agency the agreed-upon fee-for-service and any delivery costs.

(3) Processors shall provide pricing information summaries to contracting agencies and contracting agencies shall provide this information to recipient agencies as soon as possible after contract approval. If this pricing

information changes during the contract period, processors shall provide updated pricing information to the contracting agency 30 days prior to the effective date of the change, which, in turn, shall provide this updated information to eligible recipient agencies.

(e) *End products sold by distributors.*

(1) When a processor transfers end products to a distributor for delivery and sale to recipient agencies, such sales shall be under:

(i) A refund system as defined in § 250.3 and in accordance with paragraph (k) of this section; or

(ii) A hybrid system which provides a refund for the contract value of the donated food shall be provided to the distributor in accordance with paragraph (k) of this section and the price of each unit of end product purchased by eligible recipient agencies through a distributor shall be discounted by the contract value of the donated foods contained therein; or

(iii) An alternative value pass-through system under which the contract value of the donated food contained in each unit of end product shall be passed on to the recipient agency and which has been approved by FCS in accordance with paragraph (d)(1)(iii) of this section; or

(iv) When a processor arranges for delivery of processed end products produced under fee-for-service contracts by distributors, the products shall be delivered and invoiced using one of the following procedures:

(A) The recipient agency is billed by the processor for the fee-for-service and the distributor bills the recipient agency for the storage and delivery of the end products; or

(B) The processor arranges for the delivery of end products through a distributor on behalf of the recipient agency. In this system, the processor's invoice must include both the fee-for-service and the distributor's charges as separate, clearly identifiable charges.

(2) Processors shall provide pricing information summaries to contracting agencies and contracting agencies shall provide this information to recipient agencies as soon as possible after contract approval. If this pricing information changes during the contract period, the processor shall provide updated pricing information to the contracting agency, which, in turn, shall provide this information to the eligible recipient agencies.

(f) *Substitution of donated foods with commercial foods.*

(1) * * *

(i) Only butter, cheese, corn grits, cornmeal, flour, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, vegetable oil, and spaghetti may be substitutable as defined in § 250.3 and such other food as FCS specifically approves as substitutable under paragraph (f)(4) of this section (substitution of meat and poultry items shall not be permitted).

* * * * *

(iii) Processors shall maintain documentation that they have not reduced their level of commercial production because of participation in the State processing program.

(2) * * * Where commercial food is authorized to be substituted for any donated food specifically listed in paragraph (f)(1)(i) of this section, the processor shall maintain records to substantiate that it continues to acquire on the commercial market sufficient purchases of substitutable food for commercial production and any amounts necessary to meet the 100 percent yield requirement. * * *

* * * * *

(4) Processor may request approval to substitute commercial foods for donated foods not specifically listed in paragraph (f)(1)(i) of this section by submitting such request to FCS in writing and satisfying all requirements of paragraphs (f)(1)(ii) and (iii) of this section. FCS will notify the processor in writing of authorization to substitute commercial foods for donated foods not listed in paragraph (f)(1)(i) of this section and such authorization shall apply for the duration of all current contracts entered into by the processor pursuant to this section.

* * * * *

(k) *Refund payments.* (1) When end products are sold to recipient agencies in accordance with the refund provisions of paragraph (d) or (e) of this section, each recipient agency shall submit refund applications to the processor within 30 days from the close of the month in which the sales were made, except that recipient agencies may submit refund applications to a single processor on a Federal fiscal quarterly basis if the total anticipated refund due for all purchases of product from that processor during the quarter is 25 dollars or less.

* * * * *

(3) Not later than 30 days after receipt of the application by the processor, the processor shall make a payment to the recipient agency or distributor equal to the stated contract value of the donated foods contained in the purchased end products covered by the refund application, except that processors may group together refund applications for a single recipient agency on a Federal fiscal quarterly basis if the total anticipated refund due that recipient agency during the quarter is 25 dollars or less. Copies of requests for refunds and payments to recipient agencies and/or distributors shall be forwarded to the appropriate distributing agency by the processor.

* * * * *

(m) *Performance reports.* (1) Processors shall be required to submit to distributing agencies monthly reports of performance under each processing contract with year-to-date totals. Processors contracting with agencies other than a distributing agency shall submit such reports to the distributing agency having authority over that particular contracting agency. Performance reports shall be postmarked no later than the final day of the month following the reporting period; however, the final performance report for the contract period shall be postmarked no later than 60 postmarked days from the close of the contract year. The report shall include:

* * * * *

(n) *Inventory controls.* * * *

(3) The last monthly performance report for the contract period, as required in paragraph (m)(1) of this section, shall serve as the annual reconciliation report. * * *

(4) Distributing agencies shall certify the accuracy of the annual reconciliation report and forward it to the FCS Regional Office. Such report shall be postmarked no later than 90 days following the close of the contract year. All monies shall be used in accordance with FCS Instruction 410–1, Non-Audit Claims, Food Distribution Program.

* * * * *

(o) *Processing inventory reports.* (1) Distributing agencies shall forward to the FCS Regional Office the inventory summary portion of the monthly performance report submitted by the processors in accordance with paragraph (m)(1) of this section for the last month of each Federal fiscal quarter. Such reports shall be postmarked no later than 60 days following the close of each Federal fiscal quarter, except that such reports shall be postmarked no later than 90 days following the close of the contract year.

* * * * *

PART 252—NATIONAL COMMODITY PROCESSING PROGRAM

1. The authority citation for Part 252 continues to read as follows:

Authority: Sec. 416, Agricultural Act of 1949 (7 U.S.C. 1431).

§ 252.3 [Amended]

2. In § 252.3, the first sentence of paragraph (c) is amended by removing the words "When FCS approves the substitution of donated commodities with commercial food or when the agreement permits such substitution" and adding in their place the words "When the processor substitutes commercial food for donated food in accordance with § 252.4(c)(7) of this part."

3. In § 252.4:

a. A new sentence is added to the end of paragraph (b);

b. The third sentence of paragraph (c)(1) is revised;

c. The third sentence of the introductory text of paragraph (c)(4) is revised and a new sentence is added following the third sentence;

d. Paragraph (c)(4)(i)(B) is revised;

e. A sentence is added to the end of paragraph (c)(4) (iii);

f. Paragraph (c)(7) is revised;

g. Paragraphs (c)(14), (c)(15), (c)(16), and (c)(17) are redesignated as paragraphs (c)(15), (c)(16), (c)(17), and (c)(18), and a new paragraph (c)(14) is added.

The revisions and additions read as follows:

§ 252.4 Application to participate and agreement.

* * * * *

(b) *Agreement between FCS and Participating Food Processors.* * * * However, FCS may extend processing contracts for two 1-year periods, provided that any changed information must be updated before any contract extension is granted, including the information in paragraphs (c)(1) and (c)(5) of this section.

(c) *Processor requirements and responsibilities.* * * *

(1) * * * The end product data schedule shall provide pricing information supplied by the processor as requested by FCS and a thorough explanation of what this pricing information represents. * * *

* * * * *

(4) * * * Regardless of the method used, processors shall provide pricing information summaries to recipient agencies as soon as possible after contract approval by FCS. If the pricing information changes during the contract period, processors shall provide updated pricing information to FCS and the recipient agencies 30 days prior to the effective date. * * *

(i) * * *

(B) *Refund system.* The processor shall invoice the recipient agency for the commercial/gross price of the end product. The recipient agency shall submit a refund application to the processor within 30 days of receipt of the processed end product, except that recipient agencies may submit refund applications to a single processor on a Federal fiscal quarterly basis if the total anticipated refund due for all purchases of end product from that processor during the quarter is 25 dollars or less. The processor shall pay directly to the eligible recipient agency within 30 days of receipt of the refund application from the recipient agency, an amount equal to the established agreement value of donated food per case of end product multiplied by the number of cases delivered to and accepted by the recipient agency, except that processors may group together refund applications for a single recipient agency on a Federal fiscal quarterly basis if the total anticipated refund due that recipient agency during the quarter is 25 dollars or less. In no event shall refund applications for purchases during the period of agreement be accepted by the processor later than 60 days after the close of the agreement period.

* * * * *

(iii) * * * FCS may consider the paperwork and resource burden associated with alternative value pass-through systems when considering approval and reserves the right to deny approval of systems which are labor-intensive and provide no greater accountability than those systems permitted under paragraph (c)(4) of this section.

* * * * *

(7)(i) Only butter, cheese, corn grits, cornmeal, flour, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, vegetable oil, and spaghetti may be substituted as defined in § 252.2 and such other food as FCS specifically approves as substitutable under paragraph (c)(7)(i)(A) of this section (substitution of meat and poultry items shall not be permitted).

(A) Processors may request approval to substitute commercial foods for donated foods not listed in paragraph (c)(7)(i) of this section by submitting such request to FCS in writing and satisfying the requirements of paragraph (c)(7) of this section. FCS will notify the processor in writing of authorization to substitute commercial foods for donated foods not listed in paragraph (c)(7)(i) of this section and such authorization shall apply for the duration of all current contracts entered into by the processor pursuant to this section.

(B) The processor shall maintain records to substantiate that it continues to acquire on the commercial market amounts of substitutable food consistent with their levels of non-NCP Program production and to document the receipt and disposition of the donated food.

(C) FCS shall withhold deliveries of donated food from processors that FCS determines have reduced their level of non-NCP Program production because of participation in the NCP Program.

(ii) When the processor seeks FCS approval to substitute donated nonfat dry milk with concentrated skim milk under paragraph (c)(7)(i)(A) of this section, an addendum must be added to the request which states:

(A) The percent of milk solids that, at a minimum, must be contained in the concentrated skim milk;

(B) The weight ratio of concentrated skim milk to donated nonfat dry milk:

(*1*) The weight ratio is the weight of concentrated skim milk which equals one pound of donated nonfat dry milk, based on milk solids;

(*2*) In calculating this weight, nonfat dry milk shall be considered as containing 96.5 percent milk solids;

(*3*) If more than one concentration of concentrated skim milk is to be used, a separate weight ratio must be specified for each concentration;

(C) The processor's method of verifying that the milk solids content in the concentrated skim milk is as stated in the request;

(D) A requirement that the concentrated skim milk shall be produced in a USDA approved plant or in a plant approved by an appropriate regulatory authority for the processing of Grade A milk products; and

(E) A requirement that the contact value of donated food for a given amount of concentrated skim milk used to produce an end product is the value of the equivalent amount of donated nonfat dry milk, based on the weight ratio of the two foods.

(iii) Substitution must not be made solely for the purpose of selling or disposing of the donated commodity in commercial channels for profit.

* * * * *

(14) The processor shall not assign the processing contract or delegate any aspect of processing under a subcontract or other arrangement without the written consent of FCS. The subcontractor shall be required to become a party to the processing contract and conform to all conditions contained in that contract.

* * * * *

4. In § 252.5, the first sentence of paragraph (c) is revised to read as follows:

§ 252.5 Recipient agency responsibilities.

* * * * *

(c) *Refunds.* A recipient agency purchasing end products under the NCP Program from a processor utilizing a refund system shall submit a refund application supplied by the processor to the processor within 30 days of receipt of the end products, except that recipient agencies may submit refund applications to a single processor on a Federal fiscal quarterly basis if the total anticipated refund due for all purchases of end product from that processor during the quarter is 25 dollars or less.

* * *

* * * * *

Dated: December 1, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–30084 Filed 12–6–94; 8:45 am]

BILLING CODE 3410-30-U

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0837]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its risk-based capital guidelines to recognize the risk-reducing benefits of qualifying bilateral netting contracts. This final rule implements a recent revision to the Basle Accord permitting the recognition of such netting arrangements. The effect of the final rule is that state member banks and bank holding companies (banking organizations, institutions) may net positive and negative mark-to-market values of interest and exchange rate contracts in determining the current exposure portion of the credit equivalent amount of such contracts to be included in risk-weighted assets.

EFFECTIVE DATE: December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Roger Cole, Deputy Associate Director (202/452–2618), Norah Barger, Manager (202/452–2402), Robert Motyka, Supervisory Financial Analyst (202)/452–3621), Barbara Bouchard, Supervisory Financial Analyst (202/452–3072), Division of Banking Supervision and Regulation; or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division. For the hearing impaired only, Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544), 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

The Basle Accord [1] established a risk-based capital framework which was implemented for state member banks and bank holding companies by the Board in 1989. Under this framework, off-balance-sheet interest rate and exchange rate contracts (rate contracts) are incorporated into risk weighted assets by converting each contract into a credit equivalent amount. This amount is then assigned to the appropriate credit risk category according to the identity of the obligor or counterparty or, if relevant, the guarantor or the nature of the collateral. The credit equivalent amount of an interest or exchange rate contract can be assigned to a maximum credit risk category of 50 percent.

The credit equivalent amount of a rate contract is determined by adding together the current replacement cost (current exposure) and an estimate of the possible increase in future replacement cost in view of the volatility of the current exposure over the remaining life of the contract (potential future exposure, also referred to as the add-on).[2]

For risk-based capital purposes, a rate contract with a positive mark-to-market value has a current exposure equal to that market value. If the mark-to-market value of a rate contract is zero or negative, then there is no replacement cost associated with the contract and the current exposure is zero. The original Basle Accord and the Board's guidelines provided that current exposure would be determined individually for each rate contract entered into by a banking organization; institutions generally were not permitted to offset, that is, net, positive and negative market values of multiple rate contracts with a single counterparty to determine one current credit exposure relative to that counterparty.[3]

In April 1993 the Basle Supervisors' Committee proposed a revision to the Basle Accord, endorsed by the G–10 Governors in July 1994, that permits institutions to net positive and negative market values of rate contracts subject to a qualifying, legally enforceable, bilateral netting arrangement. Under the revision, institutions with a qualifying netting arrangement may calculate a single net current exposure for purposes of determining the credit equivalent amount for the included contracts.[4] If the net market value of the contracts included in such a netting arrangement is positive, then that market value equals the current exposure for the netting contract. If the net market value is zero or negative, then the current exposure is zero.

The Board's Proposal

On May 20, 1994, the Board and the Office of the Comptroller of the Currency (OCC) issued a joint proposal to amend their respective risk-based capital standards (59 FR 26456) in accordance with the Basle Supervisors' Committee's April 1993 proposal.[5] The joint proposal provided that for capital purposes institutions regulated by the Board and the OCC could net the positive and negative market values of interest and exchange rate contracts subject to a qualifying, legally enforceable, bilateral netting contract to calculate one current exposure for that netting contract (sometimes referred to as the master netting contract).

The proposal provided that the net current exposure would be determined by adding together all positive and negative market values of individual contracts subject to the netting contract. The net current exposure would equal the sum of the market values if that sum is a positive value, or zero if the sum of

[1] The Basle Accord is a risk-based framework that was proposed by the Basle Committee on Banking Supervision (Basle Supervisors' Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. The Basle Supervisors' Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] This method of determining credit equivalent amounts for rate contracts is identified in the Basle Accord as the current exposure method, which is used by most international banks.

[3] It was noted in the Accord that the legal enforceability of certain netting arrangements was unclear in some jurisdictions. The legal status of netting by novation, however, was determined to be settled and this limited type of netting was recognized. Netting by novation is accomplished under a written bilateral contract providing that any obligation to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date. The previously existing contracts are extinguished and a new contract for the single net amount, in effect, legally replaces the amalgamated gross obligations.

[4] The revision to the Accord notes that national supervisors must be satisfied about the legal enforceability of a netting arrangement under the laws of each jurisdiction relevant to the arrangement. The Accord also states that, if any supervisor is dissatisfied about enforceability under its own laws, the netting arrangement does not satisfy this condition and neither counterparty may obtain supervisory benefit.

[5] The Office of Thrift Supervision (OTS) issued a similar netting proposal on June 14, 1994 and the Federal Deposit Insurance Corporation (FDIC) issued its netting proposal on July 25, 1994.

the market values is zero or a negative value. The proposals did not alter the calculation method for potential future exposure.[6]

Under the proposal, institutions would be able to net for risk-based capital purposes only with a written bilateral netting contract that creates a single legal obligation covering all included individual rate contracts and does not contain a walkaway clause.[7] The proposal required an institution to obtain a written and reasoned legal opinion(s) stating that under the master netting contract the institution would have a claim to receive, or an obligation to pay, only the net amount of the sum of the positive and negative market values of included individual contracts if a counterparty failed to perform due to default, insolvency, bankruptcy, liquidation, or similar circumstances.

The proposal indicated that the legal opinion must normally cover: (i) The law of the jurisdiction in which the counterparty is chartered, or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, the law of the jurisdiction in which the branch is located; (ii) the law that governs the individual contracts covered by the netting contract; and (iii) the law that governs the netting contract.

The proposal provided that an institution must maintain in its files documentation adequate to support the bilateral netting contract. Documentation would typically include a copy of the bilateral netting contract, legal opinions and any related translations. In addition, the proposal required an institution to establish and maintain procedures to ensure that the legal characteristics of netting contracts would be kept under review.

Under the proposal, the Federal Reserve could disqualify any or all contracts from netting treatment for risk-based capital purposes if the requirements of the proposal were not satisfied. In the event of disqualification, the affected contracts would be treated as though they were not subject to the master netting contract. The proposal indicated that outstanding netting by novation arrangements would not be grandfathered, that is, such arrangements would have to meet all of the proposed requirements for qualifying bilateral netting contracts.

The proposal requested general comments as well as specific comments on the nature of collateral arrangements and the extent to which collateral might be recognized in conjunction with bilateral netting contracts.

Comments Received

The Board received nineteen public comments on the proposed amendment. Eleven comments were from banking organizations and five were from industry trade associations and organizations. In addition, there were three comments from law firms. All commenters supported the expanded recognition of bilateral netting contracts for risk-based capital purposes. Several commenters encouraged recognition of such contracts as quickly as possible. Many of the commenters concurred with one of the principal underlying tenets of the proposal, that is, that legally enforceable bilateral netting contracts can provide an efficient and desirable means for institutions to reduce or control credit exposure. A few commenters noted that, in their view, the recognition of bilateral netting contracts would create an incentive for market participants to use such arrangements and would encourage lawmakers to clarify the legal status of netting arrangements in their jurisdictions. One commenter noted that the expanded recognition of bilateral netting contracts would help keep U.S. banking organizations competitive in global derivatives markets.

While generally expressing their endorsement for the expanded recognition of bilateral netting contracts, nearly all commenters offered suggestions or requested clarification regarding details of the proposals. In particular, the commenters raised issues concerning specifics of the required legal opinions, the treatment of collateral, and the grandfathering of walkaway clauses and novation agreements.

Legal Opinions

Almost all commenters addressed the proposed requirement that institutions obtain legal opinions concluding that their bilateral netting contracts would be enforceable in all relevant jurisdictions. Commenters did not object to the general requirement that they secure legal opinions, rather they raised a number of questions about the form and substance of an acceptable opinion.

Form. Several commenters requested clarification as to the specific form of the legal opinion. Commenters wanted to know if a memorandum of law would satisfy the requirement or if a legal *opinion* would be required. They questioned whether a memorandum or opinion could be addressed to, or obtained by, an industry group, and whether a generic opinion or memorandum relating to a standardized netting contract would satisfy the legal opinion requirement.

Several commenters suggested that an opinion secured on behalf of the banking industry by an organization should be sufficient so long as the individual institution's counsel concurs with the opinion and concludes that the opinion applies directly to the institution's specific netting contract and to the individual contracts subject to it. A few commenters requested confirmation that legal opinions would not have to follow a predetermined format.

Scope. Several commenters identified two possible interpretations of the proposed language with regard to the scope of the legal opinions. They asked for clarification as to whether the opinions would be required to discuss only whether all relevant jurisdictions would recognize the contractual choice of law, or whether they must also discuss the enforceability of netting in bankruptcy or other instances of default. One commenter suggested deleting the requirement for a choice of law analysis.

A number of commenters objected to the proposed requirement that the legal opinion for a multibranch netting contract (that is, a netting contract between multinational banks that includes contracts with branches of the parties located in various jurisdictions) address the enforceability of netting under the law of the jurisdiction where each branch is located. These commenters stated that it should be sufficient for the legal opinion to conclude that netting would be enforced in the jurisdiction of the counterparty's home office if the master netting contract provides that all transactions are considered obligations of the home office and the branch jurisdictions recognize that provision.

Severability. Several commenters expressed concern about the proposed treatment for netting contracts that include contracts with branches in jurisdictions where the enforceability of netting is unclear. In such circumstances, commenters asserted, unenforceability or uncertainty in one

[6] Potential future exposure is estimated by multiplying the effective notional amount of a contract by a credit conversion factor which is based on the type of contract and the remaining maturity of the contract. Under the Board/OCC proposal, a potential future exposure amount would be calculated for each individual contract subject to the netting contract. The individual potential future exposures would then be added together to arrive at one total add-on amount.

[7] A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract.

jurisdiction should not invalidate the entire netting contract for risk-based capital netting treatment. These commenters contended that contracts with branches of a counterparty in jurisdictions that recognize netting arrangements should be netted and contracts with branches in jurisdictions where the enforceability of netting is not supported by legal opinions should, for risk-based capital purposes, be severed, or removed from the master netting contract and treated as though they were not subject to that contract. These commenters noted that this treatment should only be available to the extent it is supported by legal opinion.

Conclusions. The proposal required a legal opinion to conclude that "relevant court and administrative authorities would find" the netting to be effective. Many commenters that discussed this aspect of the proposal expressed concern that this standard was too high. They suggested, instead, that the opinions be required to conclude that netting "should" be effective.

A few commenters requested clarification regarding the proposed requirement that the netting contract must create a single legal obligation.

Collateral

Twelve commenters addressed the proposal's specific request for comment on the nature of collateral and the extent to which collateral might be recognized in conjunction with bilateral netting contracts. All of these commenters believed collateral should be recognized as a means of reducing credit exposure. A few commenters noted that collateral arrangements are increasingly being used with derivative transactions.

Several commenters stated that for netting contracts that call for the use of collateral, the amount of required collateral is determined from the net mark-to-market value of the master netting contract. A few commenters added that mark-to-market collateral often is used in conjunction with a collateral "add-on" based on such things as the notional amount of the underlying contracts, the maturities of the contracts, the credit quality of the counterparty, and volatility levels.

A number of commenters offered their opinions as to how collateral should be recognized for risk-based capital purposes. Some suggested that the existing method of recognizing collateral for purposes of assigning credit equivalent amounts to risk categories is applicable to derivative transactions as well. Other commenters expressed the view that collateral should be recognized when assigning risk weights to the extent it is legally available to cover the total credit exposure for the bilateral netting contract in the event of default and that this availability should be addressed in the legal opinions.

Several other commenters suggested separating the net current exposure and potential future exposure of bilateral netting contracts for determining collateral coverage and appropriate risk weights. One commenter favored recognizing collateral for capital purposes by allowing an institution to offset net current exposure by the amount of the collateral to further reduce the credit equivalent amount.

Two commenters requested clarification that contracts subject to qualifying netting contracts could be eligible for a zero percent risk weight if the transaction is properly collateralized in accordance with the Board's collateralized transactions rule.[8]

Walkaway Clauses

Several commenters addressed the proposed prohibition against walkaway clauses in contracts qualifying for netting for risk-based capital purposes. While most of these commenters agreed that, ultimately, walkaway clauses should be eliminated from master netting contracts, they favored a phase-out period, during which outstanding bilateral netting contracts containing walkaway clauses could qualify for capital netting treatment. Several commenters contended that if a defaulter is a net debtor under the contract, the existence of a walkaway clause would not affect the amount owed to the non-defaulting creditor.

Novation

A few commenters expressed concern that the proposal did not grandfather outstanding novation agreements. These commenters suggested a phase-in period during which novation agreements would not be required to be supported by legal opinions.

Other Issues

One commenter requested greater detail on the nature and extent of examination review procedures. Two commenters stated that in some situations obtaining translations might be burdensome. Another commenter suggested assurance that the Federal Reserve would not disqualify netting contracts in an unreasonable manner.

Approximately one-half of the commenters expressed concern that the proposal specifically was limited to interest rate and exchange rate contracts. All of these opposed limiting the range of products that could be included under qualifying netting contracts. In this regard, one commenter noted that where there is sufficient legal support confirming the enforceability of cross-product netting, such netting should be recognized for capital purposes.

A number of commenters used the proposal as an opportunity to discuss the manner in which the add-on for potential future exposure is calculated. They suggested netting contracts should be recognized not only as a way to reduce the current exposure to a counterparty, but also the effects of such netting contracts should be taken into account to reduce the amount of capital organizations must hold against the potential future exposure to the counterparty.

Final Rule

After considering the public comments received and further deliberating the issues involved, the Board is adopting a final rule recognizing, for capital purposes, qualifying bilateral netting contracts. This final rule is substantially the same as proposed.

Legal Opinions

Form. The final rule requires that institutions obtain a written and reasoned legal opinion(s) concluding that the netting contract is enforceable in all relevant jurisdictions. This requirement is aimed at ensuring there is a substantial legal basis supporting the legal enforceability of a netting contract before reducing a banking organization's capital requirement based on that netting contract. A legal opinion, as generally recognized by the legal community in the United States, can provide such a legal basis. A memorandum of law may be an acceptable alternative as long as it addresses all of the relevant issues in a credible manner.

As discussed in the proposal, the legal opinions may be prepared by either an outside law firm or an institution's in-house counsel. The salient requirements for an acceptable legal opinion are that it: (i) Addresses all relevant jurisdictions; and (ii) concludes with a high degree of certainty that in the event of a legal challenge the banking

[8] In December 1992 the Board issued an amendment to its risk-based capital guidelines permitting certain collateralized transactions to qualify for a zero percent risk weight (57 FR 62180, December 30, 1992). In order to qualify for a zero percent risk weight, an institution must maintain a positive margin of qualifying collateral at all times. Thus, the collateral arrangement should provide for immediate liquidation of the claim in the event that a positive margin of collateral is not maintained. The OCC has issued a similar proposal (58 FR 43822, August 16, 1993).

organization's claim or obligation would be determined by the relevant court or administrative authority to be the net sum of the positive and negative mark-to-market values of all individual contracts subject to the bilateral netting contract. The subject matter and complexity of required legal opinions will vary.

To some extent, institutions may use general, standardized opinions to help support the legal enforceability of their bilateral netting contracts. For example, a banking organization may have obtained a memorandum of law addressing the enforceability of netting provisions in a particular foreign jurisdiction. This opinion may be used as the basis for recognizing netting generally in that jurisdiction. However, with regard to an individual master netting contract, the general opinion would need to be supplemented by an opinion that addresses issues such as the enforceability of the underlying contracts, choice of law, and severability.

For example, the Board does not believe that a generic opinion prepared for a trade association with respect to the effectiveness of netting under the standard form agreement issued by the trade association, by itself, is adequate to support a netting contract. Banking organizations using such general opinions would need to supplement them with a review of the terms of the specific netting contract that the institution is executing.

Scope. With regard to the scope of the legal opinions, that is, what areas of analysis must be covered, the Board is of the opinion that legal opinions must address the validity and enforceability of the entire netting contract. The opinion must conclude that under the applicable state or other jurisdictional law the netting contract is a legal, valid, and binding contract, enforceable in accordance with its terms, even in the event of insolvency, bankruptcy, or similar proceedings. Opinions provided on the law of jurisdictions outside of the U.S. should include a discussion and conclusion that netting provisions do not violate the public policy or the law of that jurisdiction.

The Board has further determined that one of the most critical aspects of a qualifying netting contract is the contract's enforceability in any jurisdiction whose law would likely be applied in an enforcement action, as well as the jurisdiction where the counterparty's assets reside. In this regard, and in light of the policy in some countries to liquidate branches of foreign banking organizations independent of the head office, the Board is retaining its proposed requirement that legal opinions address the netting contract's enforceability under: (i) The law of the jurisdiction in which the counterparty is chartered, or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, the law of the jurisdiction in which the branch is located; (ii) the law that governs the individual contracts subject to the bilateral netting contract; and (iii) the law that governs the netting contract.

Severability. The Board recognizes that for some multibranch netting contracts an organization may not be able to obtain a legal opinion(s) concluding that netting would be enforceable in every jurisdiction where branches covered under the master netting contract are located. The Board concurs with commenters that in such situations it may be inefficient to require institutions to renegotiate netting contracts to ensure they cover only those jurisdictions where netting is clearly enforceable. The Board has determined that, in certain circumstances for capital purposes, banking institutions may use master bilateral netting contracts that include contracts with branches across all jurisdictions. Banking institutions should calculate their net current exposure for the contracts in those jurisdictions where netting clearly is enforceable as supported by legal opinion(s). The remaining contracts subject to the netting contract should be severed from the netting contract and treated as though they were not subject to the netting contract for capital and credit purposes. This approach of essentially dividing contracts subject to the netting contact into two categories—those that clearly may be netted and those that may not—is acceptable provided that the banking organization's legal opinions conclude that the contracts that do not qualify for netting treatment are legally severable from the master netting contract and that such severance will not undermine the enforceability of the netting contract for the remaining qualifying contracts.

Conclusions. The Board has retained the proposed language that legal opinions must represent that netting would be enforceable in all relevant jurisdictions. In response to commenters' assertions that the standard for this type of legal opinion is too high, the Board notes that use of the word "would" in the capital rules does not necessarily mean that the legal opinions must also use the word "would" or that enforceability must be determined to be an absolute certainty. The intent, rather, is for banking organizations to secure a legal opinion concluding that there is a high degree of certainty that the netting contract will survive a legal challenge in any applicable jurisdiction. The degree of certainty should be apparent from the reasoning set out in the opinion.

The Board notes that the requirement for legal opinions to conclude that netting contracts must create a single legal obligation applies only to those individual contracts that are covered by, and included under, the netting contract for capital purposes. As discussed above, a netting contract may include individual contracts that do not qualify for netting treatment, provided that these individual contracts are legally severable from the contracts to be netted for capital purposes.

Institutions generally must include all contracts covered by a qualifying netting contract in calculating the current exposure of that netting contract. In the event a netting contract covers transactions that are normally excluded from the risk-based ratio calculation—for example, exchange rate contracts with an original maturity of fourteen calendar days or less or instruments traded on exchanges that require daily payment of variation margin—an institution may choose to either include or exclude all mark-to-market values of such contracts when determining net current exposure, but this choice must be followed consistently.

Collateral

The final rule permits, subject to certain conditions, institutions to take into account qualifying collateral when assigning the credit equivalent amount of a netting contract to the appropriate risk weight category in accordance with the procedures and requirements currently set forth in the Board's risk-based capital guidelines. The Board has added language to the final rule clarifying that collateral must be legally available to cover the credit exposure of the netting contract in the event of default. For example, the collateral may not be pledged solely against one individual contract subject to the master netting contract. The legal availability of the collateral must be addressed in the legal opinions.

Walkaway Clauses

The Board has considered the suggestion made by some commenters of a phase-out period for outstanding contracts with walkaway clauses. The Board continues to believe that walkaway clauses do not reduce credit risk. Accordingly, the final rule retains the provision that bilateral netting contracts with walkaway clauses are no

eligible for netting treatment for risk-based capital purposes and does not provide for a phase-out period.

Novation

The proposal required all netting contracts, including netting by novation agreements, to be supported by written legal opinions. The Board does not agree with commenters that a grandfathering period for outstanding novation agreements is needed. Rather, the Board continues to believe that all netting contracts must be held to the same standards in order to promote certainty as to the legal enforceability of the contracts and to decrease the risks faced by counterparties in the event of default. Under the final rule, a netting by novation agreement must meet the requirements for a qualifying bilateral netting contract.

Other Issues

The Board has considered all of the other issues raised by commenters. With regard to documentation, the Board reiterates that, as with all provisions of risk-based capital, a banking organization must maintain in its files appropriate documentation to support any particular capital treatment including netting of rate contracts. Appropriate documentation typically would include a copy of the bilateral netting contract, supporting legal opinions, and any related translations. The documentation should be available to examiners for their review.

The Board recognizes commenters' concerns that the proposed rule was limited specifically to interest and exchange rate contracts. The Board notes that both the Basle Accord and the Board's risk-based capital guidelines currently do not address derivatives contracts other than rate contracts. This final rule does not attempt to go beyond the scope of the existing risk-based capital framework and applies only to netting contracts encompassing interest rate and foreign exchange rate contracts. The Board, however, notes that the Basle Supervisors' Committee issued a proposal for public comment in July 1994 to amend the Basle Accord that explicitly would set forth the risk-based capital treatment for other types of derivative transactions, such as commodity, precious metal, and equity contracts. In this regard, the Board issued a similar proposal, based on the Basle Supervisors' Committee proposal, to amend its risk-based capital guidelines (59 FR 43508, August 24, 1994).

Until the Basle Accord has been revised and the Board's risk-based capital rules have been amended to encompass commodity, precious metal, and equity derivative contracts, the Board, rather than automatically disqualifying from capital netting treatment an entire netting contract that includes non-rate-related transactions, will permit institutions to apply the following treatment. In determining the current exposure of otherwise qualifying netting contracts that include non-rate-related contracts, institutions will be permitted to net the positive and negative mark-to-market values of the included interest and exchange rate contracts, while severing the non-rate-related contracts and treating them for risk-based capital purposes as individual contracts that are not subject to the master netting contract. (This treatment is similar to the treatment applied to a netting contract that includes contracts in jurisdictions where the enforceability of netting is not supported by legal opinion. With non-rate-related contracts, however, legal opinions on severability are not required.)

The Board notes that the regulatory language with regard to the calculation of potential future exposure remains essentially the same as that proposed. The Board has clarified an underlying premise of the current exposure method for calculating credit exposure as set forth in the Basle Accord, that is, the add-on for potential future exposure must be calculated based on the effective, rather than the apparent, notional principal amount and the notional amount an institution uses will be subject to examiner review.[9]

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board hereby certifies that this final rule will not have a significant impact on a substantial number of small business entities. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act and Regulatory Burden

The Board has determined that this final rule will not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulation that imposes additional requirements on insured depository institutions. Section 302 also requires such a rule to take effect on the first day of the calendar quarter following final publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate.

The new capital rule imposes certain requirements on depository institutions that wish to net the current exposures of their rate contracts for purposes of calculating their risk-based capital requirements. For these institutions, any burden of complying with the requirements of netting under a legally enforceable netting contract and obtaining the necessary legal opinions should be outweighed by the benefits associated with a lower capital requirement. The new rule will not affect institutions that do not wish to net for capital purposes. For these reasons, the Board has determined that an effective date of December 31, 1994 is appropriate, in order to allow banking organizations to take advantage of netting in their year-end statements, if they so desire. For these same reasons, in accordance with 5 U.S.C. 553(d)(3) the Board finds there is good cause not to follow the 30-day notice requirements of 5 U.S.C. 553(d) and to make the rule effective on December 31, 1994.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Branches, Capital adequacy, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities, State member banks.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set out in the preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are amended as set forth below.

[9] The notional amount is, generally, a stated reference amount of money used to calculate payment streams between the counterparties. In the event that the effect of the notional amount is leveraged or enhanced by the structure of the transaction, institutions must use the actual, or effective, notional amount when determining potential future exposure.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248(a) and 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p-1, 3105, 3310, 3331–3351 and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1 and 78w; 31 U.S.C. 5318.

2. Appendix A to part 208 is amended by revising:

a. Section III.E.2.;

b. Section III.E.3;

c. Section III.E.5.;

d. The last heading and two subsequent paragraphs of Attachment IV; and

e. Attachment V.

The revisions read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

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III. * * *

E. * * *

12. *Calculation of credit equivalent amounts. a.* The credit equivalent amount of an off-balance-sheet rate contract that is not subject to a qualifying bilateral netting contract in accordance with section III.E.5. of this appendix A is equal to the sum of (i) the current exposure (sometimes referred to as the replacement cost) of the contract; and (ii) an estimate of the potential future credit exposure over the remaining life of the contract.

b. The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in the relevant rates, as well as counterparty credit quality.

c. The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. Banks should, subject to examiner review, use the effective rather than the apparent or stated notional amount in this calculation. The conversion factors are:

Remaining maturity	Interest rate contracts (percent)	Exchange rate contracts (percent)
One year or less	0	1.0
Over one year	0.5	5.0

d. Examples of the calculation of credit equivalent amounts for these instruments are contained in Attachment V of this appendix A.

e. Because exchange rate contracts involve an exchange of principal upon maturity, and exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange rate contracts than for interest rate contracts.

f. No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, so-called floating/floating or basis swaps; the credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

3. *Risk weights.* Once the credit equivalent amount for an interest rate or exchange rate contract has been determined, that amount is assigned to the risk weight category appropriate to the counterparty, or, if relevant, to the guarantor or the nature of any collateral.[49] However, the maximum weight that will be applied to the credit equivalent amount of such instruments is 50 percent.

* * * * *

5. *Netting.* a. For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values in the determination of a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of rate contracts is recognized for purposes of calculating the credit equivalent amount provided that:

i. The netting is accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the bank would have a claim to receive, or obligation to pay, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to any of the following events: Default, insolvency, liquidation, or similar circumstances.

ii. The bank obtains a written and reasoned legal opinion(s) representing that in the event of a legal challenge—including one resulting from default, insolvency, liquidation, or similar circumstances—the relevant court and administrative authorities would find the bank's exposure to be such a net amount under:

1. The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

2. The law that governs the individual contracts covered by the netting contract; and

3. The law that governs the netting contract.

iii. The bank establishes and maintains procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law.

iv. The bank maintains in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

b. A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[50]

c. By netting individual contracts for the purpose of calculating its credit equivalent amount, a bank represents that it has met the requirements of this appendix A and all the appropriate documents are in the bank's files and available for inspection by the Federal Reserve. The Federal Reserve may determine that a bank's files are inadequate or that a netting contract, or any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in paragraph 5.a.ii.*1.* through 5.a.ii.*3.* of section III of this appendix A. If such a determination is made, the netting contract may be disqualified from recognition for risk-based capital purposes or underlying individual contracts may be treated as though they are not subject to the netting contract.

d. The credit equivalent amount of rate contracts that are subject to a qualifying bilateral netting contract is calculated by adding (i) the current exposure of the netting contract, and (ii) the sum of the estimates of the potential future credit exposures on all individual contracts subject to the netting contract, estimated in accordance with section III.E.2. of this appendix A.[51]

e. The current exposure of the netting contract is determined by summing all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the current exposure of the netting contract is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the current exposure of the netting contract is zero. The Federal Reserve may determine that a netting contract qualifies for risk-based capital netting treatment even though certain individual contracts may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

f. In the event a netting contract covers contracts that are normally excluded from the

[49] For interest and exchange rate contracts, sufficiency of collateral or guarantees is determined by the market value of the collateral or the amount of the guarantee in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A. Collateral held against a netting contract is not recognized for capital purposes unless it is legally available to support the single legal obligation created by the netting contract.

[50] A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract.

[51] For purposes of calculating potential future credit exposure to a netting counterparty for foreign exchange contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts falling due on each value date in each currency. The reason for this is that offsetting contracts in the same currency maturing on the same date will have lower potential future exposure as well as lower current exposure.

risk-based ratio calculation—for example, exchange rate contracts with an original maturity of fourteen calendar days or less, or instruments traded on exchanges that require daily payment of variation margin—an institution may elect to consistently either include or exclude all mark-to-market values of such contracts when determining net current exposure.

g. An example of the calculation of the credit equivalent amount for rate contracts subject to a qualifying netting contract is contained in Attachment V of this appendix A.

* * * * *

Attachment IV—Credit Conversion Factors for Off-Balance-Sheet Items for State Member Banks

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Credit Conversion for Interest Rate and Exchange Rate Contracts

1. The credit equivalent amount of a rate contract is the sum of the current credit exposure of the contract and an estimate of potential future increases in credit exposure. The current exposure is the positive mark-to-market value of the contract (or zero if the mark-to-market value is zero or negative). For rate contracts that are subject to a qualifying bilateral netting contract the current exposure is, generally, the net sum of the positive and negative mark-to-market values of the contracts included in the netting contract (or zero if the net sum of the mark-to-market values is zero or negative). The potential future exposure is calculated by multiplying the effective notional amount of a contract by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts (percent)	Exchange rate contracts (percent)
One year or less	0	1.0
Over one year	0.5	5.0

2. No potential future exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating indices, that is, so called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market value. Exchange rate contracts with an original maturity of fourteen days or less are excluded. Instruments traded on exchanges that require daily payment of variation margin are also excluded.

ATTACHMENT V—CALCULATION OF CREDIT EQUIVALENT AMOUNTS FOR INTEREST RATE AND EXCHANGE RATE-RELATED TRANSACTIONS FOR STATE MEMBER BANKS

Type of contract (remaining maturity)	Potential exposure	+		Current exposure	=	Credit equivalent amount
	Notional principal (dollars)	Conversion factor	Potential exposure (dollars)	Mark-to-market value	Current exposure (dollars)	
(1) 120-day forward foreign exchange	5,000,000	.01	50,000	100,000	100,000	150,000
(2) 120-day forward foreign exchange	6,000,000	.01	60,000	−120,000	0	60,000
(3) 3-year single-currency interest-rate swap	10,000,000	.005	50,000	200,000	200,000	250,000
(4) 3-year single-currency fixed/floating interest-rate swap	10,000,000	.005	50,000	−250,000	0	50,000
(5) 7-year cross-currency floating/floating interest-rate swap	20,000,000	.05	1,000,000	−1,300,000	0	1,000,000
Total	.....	.....	1,210,000	.....	300,000	1,510,000

If contracts (1) through (5) above are subject to a qualifying bilateral netting contract, then the following applies:

	Potential future exposure (from above)	+	Net current exposure [1]	=	Credit equivalent amount
(1)	50,000				
(2)	60,000				
(3)	50,000				
(4)	50,000				
(5)	1,000,0000				
Total	1,210,000	.....	0	.....	1,210,000

[1] The total of the mark-to-market values from above is −1,370,000. Since this is a negative amount, the net current exposure is zero.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Appendix A to part 225 is amended by revising:

a. Section III.E.2.;

b. Section III.E.3.;

c. Section III.E.5.;

d. The last heading and subsequent two paragraphs of Attachment IV; and

e. Attachment V.

The revisions read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

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III. * * *

E. * * *

2. *Calculation of credit equivalent amounts. a.* The credit equivalent amount of an off-balance sheet rate contract that is not subject to a qualifying bilateral netting contract in accordance with section III.E.5. of this appendix A is equal to the sum of (i) the current exposure (sometimes referred to as the replacement cost) of the contract; and an (ii) estimate of the potential future credit exposure over the remaining life of the contract.

b. The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract, and

should reflect changes in the relevant rates, as well as counterparty credit quality.

c. The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factors. Banking organizations should, subject to examiner review, use the effective rather than the apparent or stated notional amount in this calculation. The conversion factors are:

Remaining maturity	Interest rate contracts (percent)	Exchange rate contracts (percent)
One year or less	0	1.0
Over one year	0.5	5.0

d. Examples of the calculation of credit equivalent amounts for these instruments are contained in Attachment V of this appendix A.

e. Because exchange rate contracts involve an exchange of principal upon maturity, and exchange rates are generally more volatile than interest rates, higher conversion factors have been established for exchange rate contracts than for interest rate contracts.

f. No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, so-called floating/floating or basis swaps; the credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

3. *Risk weights.* Once the credit equivalent amount for an interest rate or exchange rate contract has been determined, that amount is assigned to the risk weight category appropriate to the counterparty or, if relevant, to the guarantor or the nature of any collateral.[53] However, the maximum weight that will be applied to the credit equivalent amount of such instruments is 50 percent.

* * * * *

5. *Netting.* a. For purposes of this appendix A, netting refers to the offsetting of positive and negative mark to-market values in the determination of a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of rate contracts is recognized for purposes of calculating the credit equivalent amount provided that:

i. The netting is accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the organization would have a claim to receive, or obligation to receive or pay, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to any of the following events: default, bankruptcy, liquidation, or similar circumstances.

ii. The banking organization obtains a written and reasoned legal opinion(s) representing that in the event of a legal challenge—including one resulting from default, bankruptcy, liquidation, or similar circumstances—the relevant court and administrative authorities would find the banking organization's exposure to be such a net amount under:

1. The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

2. The law that governs the individual contracts covered by the netting contract; and

3. The law that governs the netting contract.

iii. The banking organization establishes and maintains procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law.

iv. The banking organization maintains in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

b. A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[54]

c. By netting individual contracts for the purpose of calculating its credit equivalent amount, a banking organization represents that it has met the requirements of this appendix A and all the appropriate documents are in the organization's files and available for inspection by the Federal Reserve. The Federal Reserve may determine that a banking organization's files are inadequate or that a netting contract, or any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in paragraph 5.a.ii.*1.* through 5.a.ii.*3.* of section III of this appendix A. If such a determination is made, the netting contract may be disqualified from recognition for risk-based capital purposes or underlying individual contracts may be treated as though they are not subject to the netting contract.

d. The credit equivalent amount of rate contracts that are subject to a qualifying bilateral netting contract is calculated by adding (i) the current exposure of the netting contract, and (ii) the sum of the estimates of the potential future credit exposures on all individual contracts subject to the netting contract, estimated in accordance with section III.E.2. of this appendix A.[55]

e. The current exposure of the netting contract is determined by summing all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the current exposure of the netting contract is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the current exposure of the netting contract is zero. The Federal Reserve may determine that a netting contract qualifies for risk-based capital netting treatment even though certain individual contracts may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

f. In the event a netting contract covers contracts that are normally excluded from the risk-based ratio calculation—for example, exchange rate contracts with an original maturity of fourteen calendar days or less, or instruments traded on exchanges that require daily payment of variation margin—an institution may elect to consistently either include or exclude all mark-to-market values of such contracts when determining net current exposure.

g. An example of the calculation of the credit equivalent amount for rate contracts subject to a qualifying netting contract is contained in Attachment V of this appendix A.

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Attachment IV—Credit Conversion Factors for Off-Balance-Sheet Items for Bank Holding Companies

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Credit Conversion for Interest Rate and Exchange Rate Contracts

1. The credit equivalent amount of a rate contract is the sum of the current credit exposure of the contract and an estimate of potential future increases in credit exposure. The current exposure is the positive mark-to-market value of the contract (or zero if the mark-to-market value is zero or negative). For rate contracts that are subject to a qualifying bilateral netting contract the current exposure is the net sum of the positive and negative mark-to-market values of the contracts included in the netting contract (or zero if the net sum of the mark-to-market values is zero or negative). The potential future exposure is calculated by multiplying the effective notional amount of a contract by one of the following credit conversion factors, as appropriate:

[53] For interest and exchange rate contracts, sufficiency of collateral or guarantees is determined by the market value of the collateral or the amount of the guarantee in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A. Collateral held against a netting contract is not recognized for capital purposes unless it is legally available to support the single legal obligation created by the netting contract.

[54] A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter even if the defaulter or the estate of the defaulter is a net creditor under the contract.

[55] For purposes of calculating potential future credit exposure to a netting counterparty for foreign exchange contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts falling due on each value date in each currency. The reason for this is that offsetting contracts in the same currency maturing on the same date will have lower potential future exposure as well as lower current exposure.

Remaining maturity	Interest rate contracts (percent)	Exchange rate contracts (percent)
One year or less	0	1.0
Over one year	0.5	5.0

2. No potential future exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating indices, that is, so called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market value. Exchange rate contracts with an original maturity of fourteen days or less are excluded. Instruments traded on exchanges that require daily payment of variation margin are also excluded.

ATTACHMENT V.—CALCULATION OF CREDIT EQUIVALENT AMOUNTS FOR INTEREST RATE AND EXCHANGE RATE-RELATED TRANSACTIONS FOR BANK HOLDING COMPANIES

Type of contract (remaining maturity)	Potential exposure		+	Current exposure	=	Credit equivalent amount
	Notional principal (dollars)	Conversion Factor	Potential exposure (dollars)	Mark-to-market value	Current exposure (dollars)	
(1) 120-day forward foreign exchange	5,000,000	.01	50,000	100,000	100,000	150,000
(2) 120-day forward foreign exchange	6,000,000	.01	60,000	−120,000	0	60,000
(3) 3-year single-currency fixed/floating interest rate swap	10,000,000	.005	50,000	200,000	200,000	250,000
(4) 3-year single-currency fixed/floating interest-rate swap	10,000,000	.005	50,000	−250,000	0	50,000
(5) 7-year cross-currency floating/floating interest-rate swap	20,000,000	.05	1,000,000	−1,300,000	0	1,000,000
Total			1,210,000		300,000	1,510,000

If contracts (1) through (5) above are subject to a qualifying bilateral netting contract, then the following applies:

	Potential future exposure (from above)	+	Net current exposure[1]	=	Credit equivalent amount
(1)	50,000				
(2)	60,000				
(3)	50,000				
(4)	50,000				
(5)	1,000,000				
Total	1,210,000		0		1,210,000

[1] The total of the mark-to-market values from above is −1,370,000. Since this is a negative amount, the net current exposure is zero.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 1, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–30040 Filed 12–6–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–39; Amendment 39–9066; AD 94–23–04]

Airworthiness Directives; Garrett Turbine Engine Company ATF3 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Garrett Turbine Engine Company ATF3 series turbofan engines, that requires a one-time inspection for cracks of the curvic and bore area of the high pressure turbine (HPT) rotor assembly disk, and replacement, if necessary, with a serviceable disk. This amendment is prompted by several reports of cracks discovered during routine inspections of HPT rotor assembly disks. The actions specified by this AD are intended to prevent an uncontained failure of the HPT rotor assembly disk.

DATES: Effective on February 6, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Propulsion Engines,

Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, CA 90806–2425; telephone (310) 988–5246; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Garrett Turbine Engine Company Model ATF3–6 and –6A turbofan engines was published in the **Federal Register** on February 11, 1994 (59 FR 6603). That action proposed to require a one-time inspection for cracks of the curvic and bore area of high pressure turbine (HPT) rotor assembly disks listed by serial number in Table 1 of Allied-Signal Aerospace Company, Garrett Engine Division, Alert Service Bulletin (ASB) No. ATF3–A72–6184, Revision 1, dated January 11, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the Federal Aviation Administration's (FAA) determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 75 Garrett Turbine Engine Company Model ATF3–6 and -6A turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 2 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 220 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,200.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–23–04 Garrett Turbine Engine Company: Amendment 39–9066. Docket 93–ANE–39.

Applicability: Garrett Turbine Engine Company Model ATF3–6 and –6A turbofan engines equipped with high pressure turbine (HPT) rotor assembly disk, Part Number (P/N) 3001765–1 and –2, listed by serial numbers in Table 1 of Allied-Signal Aerospace Company, Garrett Engine Division, Alert Service Bulletin (ASB) No. ATF3–A72–6184, Revision 1, dated January 11, 1993. These engines are installed on but not limited to Dassault Aviation Falcon Jet Falcon Series G (Falcon 20G/HU–25) and Mystere-Falcon 200 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained failure of the HPT rotor assembly disk, accomplish the following:

(a) For engines with 1550 or more HPT rotor assembly disk cycles since new (CSN) on the effective date of this AD, perform a one-time inspection for cracks of the curvic and bore area of the HPT rotor assembly disk, and replace if necessary, with a serviceable disk, in accordance with Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. ATF3–A72–6184, Revision 1, dated January 11, 1993, within 50 cycles in service (CIS) after the effective date of this AD.

(b) For engines with less than 1550 HPT rotor assembly disk CSN on the effective date of this AD, perform a one-time inspection for cracks of the curvic and bore area of the HPT rotor assembly disk, and replace if necessary, with a serviceable disk, in accordance with Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. ATF3–A72–6184, Revision 1, dated January 11, 1993, within 300 CIS after the effective date of this AD, or prior to accumulating 1600 CSN, whichever occurs first.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

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

(e) The inspection, and replacement, if necessary, shall be done in accordance with the following alert service bulletin:

Document No.	Pages	Revision	Date
Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. ATF3–A72–6184 ..... Total Pages: 6.	1–6	1	Jan. 11, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Propulsion Engines, Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 6, 1995.

Issued in Burlington, Massachusetts, on November 3, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–28110 Filed 12–06–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–ANE–31; Amendment 39–9072; AD 94–23–09]

Airworthiness Directives; Rolls-Royce, plc Spey Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes telegraphic airworthiness directive (AD) T89–02–52, which superseded Telegraphic AD T88–22–51 (AD), applicable to Rolls-Royce, plc (R–R) Spey series turbofan engines. Telegraphic AD T88–22–51 reduced cyclic life limits for seventh stage high pressure compressor (HPC) disks from 40,000 total part cycles in service (TPC) to 35,000 TPC for the R–R Spey Model 506–14 and –14D engines. Telegraphic AD T89–02–52 currently requires repetitive inspections or further reduced cyclic life limits for seventh stage HPC disks. This amendment increases the AD's effectivity to include additional R–R Spey engine models, eliminates the option for repetitive inspections, and further reduces the cyclic life limits. This amendment is prompted by further investigation into disk bore cracking that was caused by corrosion. The actions specified by this AD are intended to prevent a seventh stage HPC disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure.

DATES: Effective January 6, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Service Manager, Spey engines, Rolls-Royce, plc, East Kilbride, Glasgow G74 4PY, Scotland. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce, plc (R–R) Spey series turbofan engines. The CAA advised that they received a report of a three-inch crack extending radially outward from the bore on a seventh stage high pressure compressor (HPC) disk installed in a R–R Spey Model 506–14D engine. The crack originated from a corrosion pit that apparently had been present at the disk's entry into service. Investigation indicated that failure of the engine due to disk burst was imminent. That condition, if not corrected, could result in a seventh stage HPC disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure.

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

On October 20, 1988, the FAA issued Telegraphic AD T88–22–51, which reduced cyclic life limits for seventh stage HPC disks from 40,000 total part cycles in service (TPC) to 35,000 TPC for the R–R Spey Model 506–14 and –14D engines. On January 26, 1989, the FAA issued Telegraphic AD T89–02–52, which supersedes Telegraphic AD T88–22–51, and currently requires repetitive inspections or further reduced cyclic life limits for seventh stage HPC disks.

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding Telegraphic AD T89–02–52 was published in the **Federal Register** on January 11, 1994 (59 FR 1500). That action proposed to increase the AD's effectivity to include additional R–R Spey engine models, eliminate the option for repetitive inspections of seventh stage HPC disks, further reduce the cyclic life limits, and require removing from service disks that exceed the revised cyclic life limits following the schedule established in this AD.

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

The commenter concurs with the rule as proposed.

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

The FAA estimates that 173 engines installed on aircraft of U.S. registry will be affected by this AD, and that it will not take any additional work hours per engine to accomplish the required actions. Replacement parts, prorated for the reduced life, will cost approximately $1,718 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $297,214.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–23–09 Rolls-Royce, plc: Amendment 39–9072. Docket 93–ANE–31. Supersedes Telegraphic AD T89–02–52, dated January 26, 1989.

Applicability: Rolls-Royce, plc (R–R) Spey 506–14 series, 511–14 series, and 555–15 series turbofan engines installed on but not limited to British Aerospace BAC 1–11 and Fokker F28 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent a seventh stage high pressure compressor (HPC) disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure, accomplish the following:

(a) For seventh stage HPC disks that on the effective date of this airworthiness directive (AD) exceed the revised cyclic life limits described in R–R Mandatory Service Bulletin (SB) Sp72–1034, Revision 1, dated May 1990, remove from service and replace with a serviceable part within 60 days after the effective date of this AD.

(b) For seventh stage HPC disks that on the effective date of this AD do not exceed the revised cyclic life limits described in R–R Mandatory SB Sp72–1034, Revision 1, dated May 4, 1990, remove from service and replace with a serviceable part: either prior to exceeding the revised cyclic life limits, or within 60 days after the effective date of this AD, whichever occurs later.

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

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

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

(e) The actions required by this AD shall be done in accordance with the following R–R service bulletin:

Document No.	Pages	Revision	Date
Mandatory SB No. Sp72–1034. Total pages: 3.	1–3	1	May 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Service Manager, Spey engines, Rolls-Royce, plc, East Kilbride, Glasgow G74 4PY, Scotland. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 6, 1995.

Issued in Burlington, Massachusetts, on November 9, 1994.

James C. Jones,

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

[FR Doc. 94–28378 Filed 12–06–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92–NM–217–AD; Amendment 39–9080; AD 94–24–07]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires modification of the brake steering control unit (BSCU). This amendment is prompted by reports that the BSCU on these airplanes allowed a 90-degree rotation of the nose gear after landing, which resulted in significant damage to the wheels. The actions specified by this AD are intended to prevent failure of the nose gear tires and wheels and the loss of directional control of the airplane while it is on the ground.

DATES: Effective on January 6, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the **Federal Register** on April 16, 1993 (58 FR 19787). That action proposed to require modification of the brake steering control unit (BSCU) for certain airplanes equipped with twin wheel main landing gears (MLG).

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

Both commenters support the proposed rule.

Since the issuance of the proposed rule, Airbus issued Service Bulletin A320–32–1100, Revision 1, dated November 9, 1993, which describes procedures for modification of the BSCU on certain Model A320 series airplanes equipped with bogie MLG's. The modification involves upgrading the currently installed standard 3 BSCU functional software to a new standard 3.1 BSCU, which includes reprogramming of certain software for each system of the BSCU. Accomplishment of the modification will allow activation of the nose wheel steering at main gear touchdown, and authorization of rudder pedal action that would allow progressive amplitude authority from 130 to 40 knots. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service bulletin as mandatory and issued French Airworthiness Directive 92–117–025(B)R1, dated August 18,

1993, in order to assure the continued airworthiness of these airplanes in France.

The FAA finds that Model A320 series airplanes equipped with bogie MLG's are subject to the same unsafe condition that is addressed by this rule. In light of this, the FAA has revised the applicability of the final rule to include these airplanes. However, there currently are no Model A320 series airplanes equipped with bogie MLG's on the U.S. Register; therefore, no additional U.S. airplanes are affected directly by this AD action. The FAA considers that the revision to the applicability of the rule is necessary in order to ensure that the unsafe condition is addressed in the event that these specific airplanes are imported and placed on the U.S. Register in the future.

In addition, the FAA has revised paragraph (a) of the final rule to cite the appropriate service information for modification of the BSCU on airplanes equipped with bogie MLG's.

Since the issuance of the proposed rule, Airbus also has issued Service Bulletin A320–32–1094, Revision 3, dated June 24, 1993. Revision 3 of the service bulletin is essentially identical to Revision 2 (which was cited in the proposal as the appropriate source of service information), but revises the effectivity listing to include one additional airplane. The FAA has determined that this additional airplane is operated currently by a non-U.S. operator under foreign registry; therefore, this airplane is not affected directly by this AD action. The FAA has revised paragraph (a) of the final rule to cite Revision 3 of the service bulletin as an additional source of service information for accomplishment of the required modification.

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

The FAA estimates that 52 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the vendor at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,860, or $55 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–24–07 Airbus Industrie: Amendment 39–9080. Docket 92–NM–217–AD.

Applicability: Model A320 series airplanes equipped with twin wheel main landing gears (MLG) on which Airbus Industrie Service Bulletin A320–32–1094 or Airbus Industrie Modification 22990 has not been accomplished; and Model A320 series airplanes equipped with bogie MLG's on which Airbus Industrie Service Bulletin A320–32–1100 or Airbus Industrie Modification 23106 has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the nose gear tires and wheels and the loss of directional control, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the brake steering control unit (BSCU) in accordance with Airbus Industrie Service Bulletin A320–32–1094, Revision 2, dated November 25, 1992; or Revision 3, dated June 24, 1993 (for airplanes equipped with twin wheel MLG's); or in accordance with Airbus Industrie Service Bulletin A320–32–1100, Revision 1, dated November 9, 1993 (for airplanes equipped with bogie MLG's); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The modification shall be done in accordance with the following Airbus Industrie service bulletins, as applicable, which contain the following list of effective pages:

Service bulletin, reference and date	Page no.	Revision level shown on page	Date shown on page
A320–32–1094, Revision 2, November 25, 1992	1, 7	2	Nov. 25, 1992.
	2–6	1	May 26, 1992.
	8–11	Original	Mar. 25, 1992.

Service bulletin, reference and date	Page no.	Revision level shown on page	Date shown on page
A320–32–1094, Revision 3, June 24, 1993	1, 3, 6	3	June 24, 1993.
	2, 4, 5	1	May 26, 1992.
	7	2	Nov. 25, 1992.
	8–11	Original	Mar. 25, 1992.
A320–32–1100, Revision 1, November 9, 1993	1, 3–7	Original	June 18, 1993.
	2	1	Nov. 9, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 6, 1995.

Issued in Renton, Washington, on November 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–29163 Filed 12–6–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–23–AD; Amendment 39–9083; AD 94–24–10]

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Airplanes Equipped With Flight Equipment and Engineering Limited Model 121 Series Seats

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B airplanes, that requires repetitive inspections to detect cracking of the tray stop spindle and backrest spindle bosses on the inboard sections of certain seats; and replacement of the inboard sections, if necessary. This amendment also requires repair and identification of the modification plate, which would terminate the requirement to inspect repetitively. This amendment is prompted by reports of fatigue cracking in the vicinity of the tray stop spindle and backrest spindle bosses, which could lead to excessive movement and eventual failure of the backrest on these seats during aft loading. The actions specified by this AD are intended to prevent failure of the backrest on these seats, which could inhibit emergency egress.

DATES: Effective January 6, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Flight Equipment and Engineering Limited, Technical Manager, Nissen House, Grovebury Road, Leighton Buzzard, Bedfordshire LU7 8TB, United Kingdom. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Saab Model SAAB SF340A and SAAB 340B airplanes, equipped with Flight Equipment and Engineering Limited Model 121 series seats, was published in the **Federal Register** on May 3, 1994 (59 FR 22771). That action proposed to require repetitive inspections to detect cracking of the tray stop spindle and backrest spindle bosses on the inboard sections of certain seats; and replacement of the inboard sections, if necessary. It also proposed to require repair and identification of the modification plate, which would terminate the requirement to inspect repetitively.

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

The commenter has no objections to the proposal, but questions the accuracy of the description of the point of failure, as described in the preamble to the notice. The preamble stated, "Cracking in this area may weaken the machined component that attaches the backrest of the seats *to the main spars of the airplane* and may lead to excessive movement and eventual failure of the backrest on these seats during aft loading" (emphasis added). The commenter implies that it is not accurate to state that the failure point is where the seat backrests attach to the main spar of the airplane. The FAA has reconsidered its previous description and concurs that clarification is warranted. The FAA finds that the following wording comprises a more accurate description:

> Cracking in this area may eventually weaken the seat section such that the spindles attaching the table and seat back to the seat section may break free during crash loads or normal loads. This condition, if not corrected, could result in failure of the backrest of these seats, which could inhibit emergency egress.

This clarification of the description of the failure scenario in no way alters the basis for issuance of this AD or the unsafe condition addressed by it.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. Under these circumstances, at least one operator appears to have incorrectly assumed that its airplane was not subject to an AD. On the contrary, all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several

years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per workhour to $60 per workhour. The economic impact information below has been revised to reflect this increase in the specified hourly labor rate.

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

The FAA estimates that 73 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per seat to accomplish the required actions, and that the average labor rate is $60 per work hour. There are usually 34 seats per airplane. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $297,840, or $4,080 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

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

94–24–10 SAAB Aircraft AB: Amendment 39–9083. Docket 94–NM–23–AD.

Applicability: Model SAAB SF340A airplanes having serial numbers 004 through 159 inclusive, and Model SAAB 340B airplanes having serial numbers 160 through 330 inclusive; equipped with Flight Equipment and Engineering Limited (FEEL) Model 121 series seats listed in FEEL Service Bulletin 25–20–1294, Revision 1, dated May 1993, and FEEL Service Bulletin 25–20–1287, Revision 3, dated March 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the backrest on these seats, which could inhibit emergency egress, accomplish the following:

(a) Within 28 days after the effective date of this AD, perform a detailed visual inspection to detect cracking of the tray stop spindle and backrest spindle bosses of the inboard section of the seat, in accordance with FEEL Service Bulletin 25–20–1287, Revision 3, dated March 1993.

(1) If no cracking is found, or if cracking is found that does not penetrate the shear web, repeat the inspection of that seat thereafter at intervals not to exceed 150 hours time-in-service until the requirements or paragraph (b) of this AD are accomplished.

(2) If any cracking is found that penetrates the shear web, prior to further flight, replace the inboard section (up to issue 12), and identify the modification plate with "25–20–1287A," in accordance with the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 150 hours time-in-service until the requirements of paragraph (b) of the AD are accomplished.

(b) Within 6 months after the effective date of this AD, repair and identify the modification plate with "25–20–1294," in accordance with FEEL Service Bulletin 25–20–1294, Revision 1, dated May 1993. Accomplishment of the actions required by this paragraph constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The inspection shall be done in accordance with FEEL Service Bulletin 25–20–1287, Revision 3, dated March 1993. The repair and identification shall be done in accordance with FEEL Service Bulletin 25–20–1294, Revision 1, dated May 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–3, 19	1	May 1993.
4–18	Basic	Mar. 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Flight Equipment and Engineering Limited, Technical Manager, Nissen House, Grovebury Road, Leighton Buzzard, Bedfordshire LU7 8TB, United Kingdom. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 6, 1995.

Issued in Renton, Washington, on November 23, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–29437 Filed 12–6–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–199–AD; Amendment 39–9086; AD 94–25–02]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes. This action requires inspections to detect cracking in certain oil coolers, and replacement of cracked coolers with serviceable coolers. The amendment also provides for termination of the inspections by installing certain reworked and re-identified oil coolers. This amendment is prompted by reports of cracking in the welded seams of certain oil coolers. The actions specified in this AD are intended to prevent loss of engine oil due to cracking in the oil cooler, which may lead to a forced shutdown of the engine.

DATES: Effective December 22, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 22, 1994.

Comments for inclusion in the Rules Docket must be received on or before February 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–199–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model ATP airplanes. The CAA advises that it has received reports of cracking in the welded seams of certain engine oil coolers that are cooled by ram air. Investigation revealed that these oil coolers were welded incorrectly during the manufacturing process. These defective welds have been isolated to oil coolers manufactured by Normalair-Garrett Limited and having part numbers (P/N) 8248C000, 8439C000, and 8714C000. Such cracking, if not corrected, could result in loss of engine oil, which may lead to a forced shutdown of the engine.

Jetstream has issued Service Bulletin ATP–79–23, dated August 26, 1994, which describes procedures for repetitive detailed visual inspections to detect cracking in certain engine oil coolers that are cooled by ram air. This service bulletin also describes procedures for replacement of cracked oil coolers with serviceable oil coolers. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

Jetstream has also issued Service Bulletin ATP–79–24–10360A, dated September 4, 1994, which describes procedures for rework and re-identification of oil coolers having P/N's 8248C000, 8439C000, and 8714C000, that are manufactured by Normalair-Garrett Limited.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of engine oil that may lead to a forced shutdown of the engine. This AD requires repetitive detailed visual inspections to detect cracking in oil coolers having P/N 8248C000, 8439C000, or 8714C000, and replacement of cracked oil coolers with serviceable oil coolers. Installation of oil coolers that have been reworked and re-identified terminates the requirement for repetitive detailed visual inspections. The actions are required to be accomplished in accordance with the service bulletins described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this final rule to clarify this requirement.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–199–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–25–02 Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Amendment 39–9086. Docket 94–NM–199–AD.

Applicability: Model ATP airplanes having constructor's numbers 2002 through 2063, inclusive; and equipped with Normalair-Garrett Limited oil coolers having part number 8248C000, 8439C000, or 8714C000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of engine oil that may lead to a forced shutdown of the engine, accomplish the following:

(a) Prior to the accumulation of 2,000 total landings on the engine oil cooler that is cooled by ram air on the left and right engine, or within 50 hours time-in-service after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracking in the oil cooler, in accordance with British Aerospace Service Bulletin ATP–79–23, dated August 26, 1994.

(1) If no cracking is detected, repeat this inspection thereafter at intervals not to exceed 75 hours time-in-service.

(2) If any cracking is detected, prior to further flight, replace the oil cooler with a serviceable oil cooler having either part number (P/N) 8439C000–002 or 8714C000–002, in accordance with British Aerospace Service Bulletin ATP–79–23, dated August 26, 1994, or with an oil cooler than has been reworked and re-identified in accordance with British Aerospace Service Bulletin ATP–79–24–10360A, dated September 4, 1994.

(b) Installation of an oil cooler that has been reworked and re-identified as either P/N 8714C000–002 or 8439C000–002. in accordance with British Aerospace Service Bulletin ATP–79–24–10360A, dated September 4, 1994, constitutes terminating action for the inspection requirements of this AD.

Note 2: Reworked oil coolers have an initial life limit of 9,000 landings. This life limit and any changes to it are specified in the Limitations Section in Chapter 5 of the ATP Maintenance Manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The inspection shall be done in accordance with Jetstream Service Bulletin ATP–79–23, dated August 26, 1994, and the rework and re-identification shall be done in accordance with Jetstream Service Bulletin ATP–79–24–10360A, dated September 4, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 22, 1994.

Issued in Renton, Washington, on November 30, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–29918 Filed 12–6–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–207–AD; Amendment 39–9085; AD 94–25–01]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with Pratt & Whitney Model JT9D–70 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Model 747 series airplanes. This action requires inspections to detect cracking of the surfaces of the outboard strut spring beam, and replacement of cracked spring beams. It also requires an inspection to detect damage to the structure that is adjacent to the cracked spring beam, and replacement of any cracked parts. This amendment is prompted by a report of failure of a spring beam due to cracking that was propagated by fatigue. The actions specified in this AD are intended to prevent failure of a spring beam, which could lead to loss of an outboard strut.

DATES: Effective on December 22, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 22, 1994.

Comments for inclusion in the Rules Docket must be received on or before February 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: Recently, the FAA received a report that the spring beam on a Boeing Model 747–200 series airplane equipped with Pratt & Whitney (P&W) Model JT9D–70 engines was severed (failed) forward of the mid pivot bolt housing at the outboard spring beam on the number 4 outboard strut. Investigation revealed that cracking initiated at a flaw (porosity) in the material of the spring beam and propagated due to fatigue. The subject airplane was operated as a freighter and had accumulated 15,809 total flight cycles on the struts. This airplane was originally delivered with P&W Model JT9D–3 engines and struts, but was later reconfigured with P&W Model JT9D–70 engines and struts.

Spring beams are used in place of midspar fittings on the outboard struts of all Model 747 series airplanes, except those equipped with P&W Model JT9D–3 and –7 engines. (The P&W Model JT9D–3 and –7 engines have midspar fittings at the outboard strut.) Airplanes equipped with P&W Model JT9D–70 engines have spring beams that are made of titanium. All other spring beams are made of steel, which analyses and tests have shown to be more resistant to fatigue cracking than titanium spring beams.

Fatigue cracking, if not corrected, could result in failure of a spring beam, which could lead to the loss of an outboard strut.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2171, dated October 31, 1994, which describes procedures for repetitive detailed visual inspections to detect cracking of the upper, lower, and side surfaces of the spring beam, and replacement of cracked spring beams with new spring beams.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of a spring beam due to fatigue cracking, which could lead to the loss of an outboard strut. This AD requires repetitive detailed visual inspections to detect cracking of the surfaces of the spring beam from the root of the clevis lugs to the forward journal, and replacement of cracked spring beams with new spring beams. This AD also requires an additional detailed visual inspection to detect damage of the adjacent spring beam and all support fittings of the affected strut, and replacement of any cracked parts with new parts. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

As an alternative to the repetitive detailed visual inspections, this AD also provides for an optional terminating action, which entails removing the spring beam, accomplishing a fluorescent dye penetrant inspection, and accomplishing a zero-time overhaul of the spring beam, in accordance with Section 54–00–01 of the Boeing Overhaul Manual, and reinstalling that spring beam.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this requirement.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket Number 94–NM–207–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

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

94–25–01 Boeing: Amendment 39–9085. Docket 94–NM–207–AD.

Applicability: Model 747 series airplanes having line numbers 202 through 396 inclusive, equipped with Pratt & Whitney Model JT9D–70 engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a spring beam, which could lead to the loss of an outboard strut, accomplish the following:

(a) Prior to the accumulation of 10,000 total flight cycles or within 30 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracking of the upper, lower, and side surfaces of the spring beam from the root of the clevis lugs to the forward journal, in accordance with Boeing Alert Service Bulletin 747–54A2171, dated October 31, 1994. (Remove the gap covers and fairing access panels to perform this inspection.)

Note 2: The area of inspection is illustrated in Figure 3 of the service bulletin.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 300 flight cycles.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD, in accordance with the service bulletin.

(i) Replace the cracked spring beam with a new spring beam.

(ii) Perform the detailed visual inspection required by paragraph (a) of this AD to detect cracking of the other spring beam on the affected strut. Also perform a detailed visual inspection to detect damage of all spring beam support fittings of the affected strut. Prior to further flight, replace any cracked or damaged parts with new parts.

(iii) Repeat the inspection of the surfaces of the spring beam required by paragraph (a) of this AD thereafter at intervals not to exceed 300 flight cycles.

(b) Accomplishment of all of the following actions in accordance with Boeing Overhaul Manual, Section 54–00–01, constitutes terminating action for the requirements of this AD.

(1) Remove the spring beam.

(2) Accomplish a fluorescent dye penetrant inspection.

(3) Zero-time overhaul the spring beam.

(4) Reinstall that spring beam.

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

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

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

(e) The inspections and replacement shall be done in accordance with Boeing Alert Service Bulletin 747–54A2171, dated October 31, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 22, 1994.

Issued in Renton, Washington, on November 30, 1994.

James V. Devany, Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–29919 Filed 12–6–94; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 886, 888, 890, and 892

[Docket No. 94M–0260]

Medical Devices; Exemptions From Premarket Notification for Certain Classified Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is exempting 148 generic types of class I devices from the requirement of premarket notification, with limitations. For the exempted devices, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that the agency's review of such submissions will not advance its public health mission. The exemptions allow

the agency to make better use of its resources and thus better serve the public.

DATES: Effective January 6, 1995. Beginning on January 6, 1995, all device manufacturers who have 510(k) submissions pending FDA review for devices falling within a generic category which is subject to this rule, will receive a letter stating that the device is exempt from the premarket notification requirements of the act.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765 ext. 157.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 21, 1994 (59 FR 37378), FDA issued a proposed rule to exempt 164 generic types of class I devices from the requirement of premarket notification, with limitations. Interested persons were given until October 19, 1994 to comment on the proposed rule.

II. Comments

During the comment period, FDA received comments requesting that various devices be added to the list of devices that the agency was proposing be exempt from the requirement of premarket notification. The agency also received comments requesting that existing exemptions from the requirement of premarket notification for several devices, when made of certain materials, be expanded to include all devices within the classification, regardless of material composition. FDA is considering these comments and will address them in a future issue of the **Federal Register**.

Several comments requested that certain devices proposed for exemption from premarket notification also be exempted from the requirements of current good manufacturing practices (CGMP's) and records and reports. FDA has decided not to grant these additional exemptions at this time. Pursuant to 21 CFR 820.1(d), any person petitioning for an exemption from any device CGMP requirement is required to follow the procedures set forth in 21 CFR 10.30. Accordingly, the devices listed in this final rule as exempt from premarket notification continue to be subject to applicable CGMP requirements. FDA believes that compliance with CGMP's is necessary in order to ensure adequate protection of the public health

III. Conclusion

Several comments questioned the appropriateness of the proposed exemptions for a small number of the devices. In addition, FDA is reconsidering the appropriateness or scope of the proposed exemptions for several devices included in the proposed rule. Therefore, FDA is deferring action on the following 16 devices in order to review these comments and to reevaluate whether certain of the devices should be exempted from the requirement of premarket notification.

TABLE 1

CFR section	Device
862.2270 ..	Thin-layer chromatography system for clinical use.
862.2310 ..	Clinical sample concentrator.
862.2320 ..	Beta or gamma counter for clinical use.
862.2485 ..	Electrophoresis apparatus for clinical use.
862.2720 ..	Plasma oncometer for clinical use.
862.2800 ..	Refractometer for clinical use.
862.2920 ..	Plasma viscometer for clinical use.
864.2280 ..	Cultured animal and human cells.
866.5570 ..	Lactoferrin immunological test system.
868.5620 ..	Breathing mouthpiece.
868.5675 ..	Rebreathing device.
868.5700 ..	Nonpowered oxygen tent.
872.3740 ..	Retentive and splinting pin.
872.3810 ..	Root canal post.
872.6100 ..	Anesthetic warmer.
886.5850 ..	Sunglasses (nonprescription).

FDA will address these devices in a future issue of the **Federal Register.**

FDA received no adverse comments on 148 of the devices that it proposed be exempted from the requirement of premarket notification. For these 148 devices, FDA has concluded that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that the agency's review of such submissions will not advance its public health mission. Thus, FDA is finalizing the exemptions for these 148 devices from premarket notification procedures.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(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.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule reduces a regulatory burden by exempting manufacturers of devices subject to the final rule from the requirements of premarket notification, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

21 CFR Parts 868, 870, 872, 874, 876, 878, 880, 882, 888, and 890

Medical devices.

21 CFR Part 866

Biologics, Laboratories, Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 886, 888, 890, and 892 are amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 864.5350 is amended by revising paragraph (b) to read as follows:

§ 864.5350 Microsedimentation centrifuge.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

3. Section 864.7660 is amended by revising paragraph (b) to read as follows:

§ 864.7660 Leukocyte alkaline phosphatase test.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

4. Section 864.7675 is amended by revising paragraph (b) to read as follows:

§ 864.7675 Leukocyte peroxidase test.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

5. Section 864.7900 is amended by revising paragraph (b) to read as follows:

§ 864.7900 Thromboplastin generation test.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

6. Section 864.8500 is amended by revising paragraph (b) to read as follows:

§ 864.8500 Lymphocyte separation medium.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

7. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

8. Section 866.5170 is amended by revising paragraph (b) to read as follows:

§ 866.5170 Breast milk immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

9. Section 866.5220 is amended by revising paragraph (b) to read as follows:

§ 866.5220 Cohn fraction II immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

10. Section 866.5230 is amended by revising paragraph (b) to read as follows:

§ 866.5230 Colostrum immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

11. Section 866.5360 is amended by revising paragraph (b) to read as follows:

§ 866.5360 Cohn fraction IV immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

12. Section 866.5370 is amended by revising paragraph (b) to read as follows:

§ 866.5370 Cohn fraction V immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

13. Section 866.5540 is amended by revising paragraph (b) to read as follows:

§ 866.5540 Immunoglobulin G (Fd fragment specific) immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

14. Section 866.5700 is amended by revising paragraph (b) to read as follows:

§ 866.5700 Whole human plasma or serum immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 868—ANESTHESIOLOGY DEVICES

15. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

16. Section 868.5340 is amended by revising paragraph (b) to read as follows:

§ 868.5340 Nasal oxygen cannula.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

17. Section 868.5350 is amended by revising paragraph (b) to read as follows:

§ 868.5350 Nasal oxygen catheter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 870—CARDIOVASCULAR DEVICES

18. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

19. Section 870.1875 is amended by revising paragraph (a)(2) to read as follows:

§ 870.1875 Stethoscope.

(a) * * *

(2) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

* * * * *

PART 872—DENTAL DEVICES

20. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

21. Section 872.1500 is amended by revising paragraph (b) to read as follows:

§ 872.1500 Gingival fluid measurer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

22. Section 872.1820 is amended by revising paragraph (b) to read as follows:

§ 872.1820 Dental X-ray exposure alignment device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

23. Section 872.3100 is amended by revising paragraph (b) to read as follows:

§ 872.3100 Dental amalgamator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

24. Section 872.3130 is amended by revising paragraph (b) to read as follows:

§ 872.3130 Preformed anchor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

25. Section 872.3165 is amended by revising paragraph (b) to read as follows:

§ 872.3165 Precision attachment.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

26. Section 872.3240 is amended by revising paragraph (b) to read as follows:

§ 872.3240 Dental bur.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

27. Section 872.3285 is amended by revising paragraph (b) to read as follows:

§ 872.3285 Preformed clasp.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

28. Section 872.3330 is amended by revising paragraph (b) to read as follows:

§ 872.3330 Preformed crown.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

29. Section 872.3350 is amended by revising paragraph (b) to read as follows:

§ 872.3350 Gold or stainless steel cusp.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

30. Section 872.3360 is amended by revising paragraph (b) to read as follows:

§ 872.3360 Preformed cusp.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

31. Section 872.3410 is amended by revising paragraph (b) to read as follows:

§ 872.3410 Ethylene oxide homopolymer and/or carboxymethylcellulose sodium denture adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

32. Section 872.3450 is amended by revising paragraph (b) to read as follows:

§ 872.3450 Ethylene oxide homopolymer and/or karaya denture adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

33. Section 872.3490 is amended by revising paragraph (b) to read as follows:

§ 872.3490 Carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

34. Section 872.3520 is amended by revising paragraph (b) to read as follows:

§ 872.3520 OTC denture cleanser.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

35. Section 872.3530 is amended by revising paragraph (b) to read as follows:

§ 872.3530 Mechanical denture cleaner.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

36. Section 872.3580 is amended by revising paragraph (b) to read as follows:

§ 872.3580 Preformed gold denture tooth.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

37. Section 872.3670 is amended by revising paragraph (b) to read as follows:

§ 872.3670 Resin impression tray material.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

38. Section 872.3900 is amended by revising paragraph (b) to read as follows:

§ 872.3900 Posterior artificial tooth with a metal insert.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

39. Section 872.3910 is amended by revising paragraph (b) to read as follows:

§ 872.3910 Backing and facing for an artificial tooth.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

40. Section 872.4130 is amended by revising paragraph (b) to read as follows:

§ 872.4130 Intraoral dental drill.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

41. Section 872.4535 is amended by revising paragraph (b) to read as follows:

§ 872.4535 Dental diamond instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

42. Section 872.4620 is amended by revising paragraph (b) to read as follows:

§ 872.4620 Fiber optic dental light.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

43. Section 872.4730 is amended by revising paragraph (b) to read as follows:

§ 872.4730 Dental injecting needle.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

44. Section 872.5410 is amended by revising paragraph (b) to read as follows:

§ 872.5410 Orthodontic appliance and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

45. Section 872.5525 is amended by revising paragraph (b) to read as follows:

§ 872.5525 Preformed tooth positioner.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

46. Section 872.5550 is amended by revising paragraph (b)(1) to read as follows:

§ 872.5550 Teething ring.

* * * * *

(b)(1) *Classification.* Class I if the teething ring does not contain a fluid, such as water. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

* * * * *

47. Section 872.6030 is amended by revising paragraph (b) to read as follows:

§ 872.6030 Oral cavity abrasive polishing agent.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

48. Section 872.6140 is amended by revising paragraph (b) to read as follows:

§ 872.6140 Articulation paper.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

49. Section 872.6250 is amended by revising paragraph (b) to read as follows:

§ 872.6250 Dental chair and accessories.

* * * * *

(b) *Classification.* Class I. The dental chair without the operative unit device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

50. Section 872.6300 is amended by revising paragraph (b) to read as follows:

§ 872.6300 Rubber dam and accessories.

* * * * *

(b) *Classification.* Class I. The accessories to the device, i.e., rubber dam clamp, rubber dam frame and forceps for a rubber dam clamp, are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

51. Section 872.6475 is amended by revising paragraph (b) to read as follows:

§ 872.6475 Heat source for bleaching teeth.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

52. Section 872.6510 is amended by revising paragraph (b) to read as follows:

§ 872.6510 Oral irrigation unit.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

53. Section 872.6640 is amended by revising paragraph (b) to read as follows:

§ 872.6640 Dental operative unit and accessories.

* * * * *

(b) *Classification.* Class I. The accessories tray to the dental operative unit is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

54. Section 872.6865 is amended by revising paragraph (b) to read as follows:

§ 872.6865 Powered toothbrush.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

55. Section 872.6890 is amended by revising paragraph (b) to read as follows:

§ 872.6890 Intraoral dental wax.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 874—EAR, NOSE, AND THROAT DEVICES

56. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

57. Section 874.3375 is amended by revising paragraph (b) to read as follows:

§ 874.3375 Battery-powered artificial larynx.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

58. Section 874.4750 is amended by revising paragraph (b) to read as follows:

§ 874.4750 Laryngostroboscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

59. Section 874.5220 is amended by revising paragraph (b) to read as follows:

§ 874.5220 Ear, nose, and throat drug administration device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

60. Section 874.5800 is amended by revising paragraph (b) to read as follows:

§ 874.5800 External nasal splint.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

61. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

62. Section 876.5970 is amended by revising paragraph (b) to read as follows:

§ 876.5970 Hernia support.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

63. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

64. Section 878.1800 is amended by revising paragraph (b) to read as follows:

§ 878.1800 Speculum and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

65. Section 878.3750 is amended by revising paragraph (b) to read as follows:

§ 878.3750 External prosthesis adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

66. Section 878.3800 is amended by revising paragraph (b) to read as follows:

§ 878.3800 External aesthetic restoration prosthesis.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is intended for use without an external prosthesis adhesive to fasten it to the body, the device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

67. Section 878.3900 is amended by revising paragraph (b) to read as follows:

§ 878.3900 Inflatable extremity splint.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

68. Section 878.4100 is amended by revising paragraph (b) to read as follows:

§ 878.4100 Organ bag.

* * * * *

(b) *Classification.* Class I. The intestinal organ bag device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

69. Section 878.4380 is amended by revising paragraph (b) to read as follows:

§ 878.4380 Drape adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

70. Section 878.4440 is amended by revising paragraph (b) to read as follows:

§ 878.4440 Eye pad.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

71. Section 878.4470 is amended by revising paragraph (b) to read as follows:

§ 878.4470 Surgeon's gloving cream.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

72. Section 878.4635 is amended by revising paragraph (b) to read as follows:

§ 878.4635 Ultraviolet lamp for tanning.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

73. Section 878.4660 is amended by revising paragraph (b) to read as follows:

§ 878.4660 Skin marker.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

74. Section 878.4700 is amended by revising paragraph (b) to read as follows:

§ 878.4700 Surgical microscope and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

75. Section 878.4730 is amended by revising paragraph (b) to read as follows

§ 878.4730 Surgical skin degreaser or adhesive tape solvent.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

76. Section 878.4800 is amended by revising paragraph (b) to read as follows:

§ 878.4800 Manual surgical instrument for general use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

77. Section 878.4930 is amended by revising paragraph (b) to read as follows

§ 878.4930 Suture retention device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

78. Section 878.4950 is amended by revising paragraph (b) to read as follows:

§ 878.4950 Manual operating table and accessories and manual operating chair and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

79. Section 878.5900 is amended by revising paragraph (b) to read as follows:

§ 878.5900 Nonpneumatic tourniquet.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

80. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

81. Section 880.2400 is amended by revising paragraph (b) to read as follows:

§ 880.2400 Bed-patient monitor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

82. Section 880.2720 is amended by revising paragraph (b)(1) to read as follows:

§ 880.2720 Patient scale.

* * * * *

(b) *Classification.* (1) Class I for a mechanical or battery powered patient scale. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

* * * * *

83. Section 880.5180 is amended by revising paragraph (b) to read as follows:

§ 880.5180 Burn sheet.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

84. Section 880.5210 is amended by revising paragraph (b) to read as follows:

§ 880.5210 Intravascular catheter securement device.

* * * * *

(b) *Classification.* Classs I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

85. Section 880.5240 is amended by revising paragraph (b) to read as follows:

§ 880.5240 Medical adhesive tape and adhesive bandage.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

86. Section 880.5630 is amended by revising paragraph (b) to read as follows:

§ 880.5630 Nipple shield.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

87. Section 880.5740 is amended by revising paragraph (b) to read as follows:

§ 880.5740 Suction snakebite kit.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

88. Section 880.5780 is amended by revising paragraph (b)(2) to read as follows:

§ 880.5780 Medical support stocking.

* * * * *

(b) * * *

(2) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

89. Section 880.5950 is amended by revising paragraph (b) to read as follows:

§ 880.5950 Umbilical occlusion device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

90. Section 880.6060 is amended by revising paragraph (b) to read as follows:

§ 880.6060 Medical disposable bedding.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

91. Section 880.6150 is amended by revising paragraph (b) to read as follows:

§ 880.6150 Ultrasonic cleaner for medical instruments.

* * * * *

(b) *Classification.* Class I. The device, including any solutions intended for use with the device for cleaning and sanitizing the instruments, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

92. Section 880.6190 is amended by revising paragraph (b) to read as follows:

§ 880.6190 Mattress cover for medical purposes.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

93. Section 880.6900 is amended by revising paragraph (b) to read as follows:

§ 880.6900 Hand-carried stretcher.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 882—NEUROLOGICAL DEVICES

94. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

95. Section 882.1430 is amended by revising paragraph (b) to read as follows:

§ 882.1430 Electroencephalograph test signal generator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

96. Section 882.1700 is amended by revising paragraph (b) to read as follows:

§ 882.1700 Percussor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

97. Section 882.1925 is amended by revising paragraph (b) to read as follows:

§ 882.1925 Ultrasonic scanner calibration test block.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

98. Section 882.4030 is amended by revising paragraph (b) to read as follows:

§ 882.4030 Skull plate anvil.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

99. Section 882.4125 is amended by revising paragraph (b) to read as follows:

§ 882.4125 Neurosurgical chair.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

100. Section 882.4190 is amended by revising paragraph (b) to read as follows:

§ 882.4190 Clip forming/cutting instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

101. Section 882.4200 is amended by revising paragraph (b) to read as follows:

§ 882.4200 Clip removal instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

102. Section 882.4215 is amended by revising paragraph (b) to read as follows:

§ 882.4215 Clip rack.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

103. Section 882.4440 is amended by revising paragraph (b) to read as follows:

§ 882.4440 Neurosurgical headrest.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

104. Section 882.4500 is amended by revising paragraph (b) to read as follows:

§ 882.4500 Cranioplasty material forming instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

105. Section 882.4525 is amended by revising paragraph (b) to read as follows:

§ 882.4525 Microsurgical instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

106. Section 882.4535 is amended by revising paragraph (b) to read as follows:

§ 882.4535 Nonpowered neurosurgical instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

107. Section 882.4600 is amended by revising paragraph (b) to read as follows:

§ 882.4600 Leukotome.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

108. Section 882.4900 is amended by revising paragraph (b) to read as follows:

§ 882.4900 Skullplate screwdriver.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 886—OPHTHALMIC DEVICES

109. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

110. Section 886.1040 is amended by revising paragraph (b) to read as follows:

§ 886.1040 Ocular esthesiometer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

111. Section 886.1050 is amended by revising paragraph (b) to read as follows:

§ 886.1050 Adaptometer (biophotometer).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

112. Section 886.1070 is amended by revising paragraph (b) to read as follows:

§ 886.1070 Anomaloscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

113. Section 886.1090 is amended by revising paragraph (b) to read as follows:

§ 886.1090 Haidlinger brush.

* * * * *

(b) Classification. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

114. Section 886.1140 is amended by revising paragraph (b) to read as follows:

§ 886.1140 Ophthalmic chair.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the manual device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The manual device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

115. Section 886.1160 is amended by revising paragraph (b) to read as follows:

§ 886.1160 Color vision plate illuminator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

116. Section 886.1250 is amended by revising paragraph (b) to read as follows:

§ 886.1250 Euthyscope.

* * * * *

(b) *Classification.* Class I for the battery powered device. The battery powered device is exempt from premarket notification procedures in subpart E of part 807 of this chapter. Class II for the AC-powered device.

117. Section 886.1290 is amended by revising paragraph (b) to read as follows:

§ 886.1290 Fixation device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

118. Section 886.1340 is amended by revising paragraph (b) to read as follows:

§ 886.1340 Haploscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

119. Section 886.1350 is amended by revising paragraph (b) to read as follows:

§ 886.1350 Keratoscope.

* * * * *

(b) *Classification.* Class I. The AC-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device does not include computer software in the unit. The battery-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning

records, and § 820.198, with respect to complaint files.

120. Section 886.1425 is amended by revising paragraph (b) to read as follows:

§ 886.1425 Lens measuring instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

121. Section 886.1430 is amended by revising paragraph (b) to read as follows:

§ 886.1430 Ophthalmic contact lens radius measuring device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

122. Section 886.1435 is amended by revising paragraph (b) to read as follows:

§ 886.1435 Maxwell spot.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

123. Section 886.1450 is amended by revising paragraph (b) to read as follows:

§ 886.1450 Corneal radius measuring device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device does not include computer software in the unit or topographers.

124. Section 886.1660 is amended by revising paragraph (b) to read as follows:

§ 886.1660 Gonioscopic prism.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

125. Section 886.1680 is amended by revising paragraph (b) to read as follows:

§ 886.1680 Ophthalmic projector.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

126. Section 886.1690 is amended by revising paragraph (b) to read as follows:

§ 886.1690 Pupillograph.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

127. Section 886.1700 is amended by revising paragraph (b) to read as follows:

§ 886.1700 Pupillometer.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the manual device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The manual device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

128. Section 886.1810 is amended by revising paragraph (b) to read as follows:

§ 886.1810 Tangent screen (campimeter).

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

129. Section 886.1860 is amended by revising paragraph (b) to read as follows:

§ 886.1860 Ophthalmic instrument stand.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

130. Section 886.1870 is amended by revising paragraph (b) to read as follows:

§ 886.1870 Stereoscope.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

131. Section 886.1910 is amended by revising paragraph (b) to read as follows:

§ 886.1910 Spectacle dissociation test system.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

132. Section 886.1945 is amended by revising paragraph (b) to read as follows:

§ 886.1945 Transilluminator.

* * * * *

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device. The battery-powered Class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

133. Section 886.4250 is amended by revising paragraph (b) to read as follows:

§ 886.4250 Ophthalmic electrolysis unit.

* * * * *

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device. The battery-powered Class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

134. Section 886.4350 is amended by revising paragraph (b) to read as follows:

§ 886.4350 Manual ophthalmic surgical instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device meets the ANSI standard on optic radiation limits.

135. Section 886.4360 is amended by revising paragraph (b) to read as follows:

§ 886.4360 Ocular surgery irrigation device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

136. Section 886.4570 is amended by revising paragraph (b) to read as follows:

§ 886.4570 Ophthalmic surgical marker.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket

notification procedures in subpart E of part 807 of this chapter.

137. Section 886.4750 is amended by revising paragraph (b) to read as follows:

§ 886.4750 Ophthalmic eye shield.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device also is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

138. Section 886.4855 is amended by revising paragraph (b) to read as follows:

§ 886.4855 Ophthalmic instrument table.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the manual device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The manual device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

139. Section 886.5820 is amended by revising paragraph (b) to read as follows:

§ 886.5820 Closed-circuit television reading system.

* * * * *

(b) *Classification.* Class I. The AC-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

140. Section 886.5840 is amended by revising paragraph (b) to read as follows:

§ 886.5840 Magnifying spectacles.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

141. Section 886.5842 is amended by revising paragraph (b) to read as follows:

§ 886.5842 Spectacle frame.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

142. Section 886.5844 is amended by revising paragraph (b) to read as follows:

§ 886.5844 Prescription spectacle lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

143. Section 886.5900 is amended by revising paragraph (b) to read as follows:

§ 886.5900 Electronic vision aid.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

144. Section 886.5915 is amended by revising paragraph (b) to read as follows:

§ 886.5915 Optical vision aid.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 888—ORTHOPEDIC DEVICES

145. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

146. Section 888.4200 is amended by revising paragraph (b) to read as follows:

§ 888.4200 Cement dispenser.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

147. Section 888.4210 is amended by revising paragraph (b) to read as follows:

§ 888.4210 Cement mixer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

148. Section 888.4230 is amended by revising paragraph (b) to read as follows:

§ 888.4230 Cement ventilation tube.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

149. Section 888.4540 is amended by revising paragraph (b) to read as follows:

§ 888.4540 Orthopedic manual surgical instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

150. Section 888.5940 is amended by revising paragraph (b) to read as follows:

§ 888.5940 Cast component.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

PART 890—PHYSICAL MEDICINE DEVICES

151. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

152. Section 890.1175 is amended by revising paragraph (b) to read as follows:

§ 890.1175 Electrode cable.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The devices are also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

153. Section 890.3100 is amended by revising paragraph (b) to read as follows:

§ 890.3100 Mechanical chair.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

154. Section 890.3750 is amended by revising paragraph (b) to read as follows:

§ 890.3750 Mechanical table.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

155. Section 890.3920 is amended by revising paragraph (b) to read as follows:

§ 890.3920 Wheelchair component.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

156. Section 890.3940 is amended by revising paragraph (b) to read as follows:

§ 890.3940 Wheelchair platform scale.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

157. Section 890.5765 is amended by revising paragraph (b) to read as follows:

§ 890.5765 Pressure-applying device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 892—RADIOLOGY DEVICES

158. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

159. Section 892.1130 is amended by revising paragraph (b) to read as follows:

§ 892.1130 Nuclear whole body counter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

160. Section 892.1350 is amended by revising paragraph (b) to read as follows:

§ 892.1350 Nuclear scanning bed.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device is labeled with weight limit, is used with planar scanning only, and is not for diagnostic X-ray use.

161. Section 892.1640 is amended by revising paragraph (b) to read as follows:

§ 892.1640 Radiographic film marking system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

162. Section 892.5740 is amended by revising paragraph (b) to read as follows:

§ 892.5740 Radionuclide teletherapy source.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

Dated: November 30, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–30025 Filed 12–2–94; 12:01 pm]

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DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 91

[OJP No. 1011]

RIN 1121–AA25

Violent Offender Incarceration and Truth in Sentencing Incentive Grant Program

AGENCY: Department of Justice, Office of Justice Programs (OJP).

ACTION: Interim final rule.

SUMMARY: This interim rule implements and requests comments regarding the Violent Offender Incarceration and Truth in Sentencing Incentive Grant Program, Subtitle A of Title II of the Violent Crime Control and Law Enforcement Act of 1994.

The Violent Offender Incarceration and Truth in Sentencing Grant Program will provide grants to states, and states organized in multi-state compacts, for assistance to correctional systems. These regulations are being issued in accordance with the mandate in Subtitle A of Title II that rules and regulations regarding the uses of grant funds under this program be issued. While this rule discusses the implementation of the overall Subtitle A program, fiscal year 1995 funds have only been appropriated for the construction-related costs of correctional boot camps.

DATES: Interim rule effective on December 7, 1994; comments must be received March 7, 1995.

ADDRESSES: Comments may be sent to Marlene Beckman at the Office of Justice Programs, 633 Indiana Avenue, 13th Floor, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center at 1–800–421–6770 or (202) 307–1480.

SUPPLEMENTARY INFORMATION: Federal funding is authorized under Subtitle A of Title II of the Violent Crime Control and Law Enforcement Act of 1994 (Subtitle A), Public Law 103–322, for grants to states, and states organized in multi-state compacts, for assistance to adult and juvenile correctional systems. The program recognizes that states and local jurisdictions have experienced substantial increases in jail, prison and juvenile confinement populations in recent years, resulting in escalating costs and serious difficulties in managing overcapacity correctional populations. Because of these constraints, correctional systems have often been unable to implement new programs, develop alternative confinement strategies, or open new facilities. This program seeks to provide funds to address the immediate needs of correctional facilities and programs.

In particular, the program emphasizes the need to make available both conventional jail and prison space for the confinement of violent offenders and to ensure that violent offenders remain incarcerated for substantial periods of time through the implementation of truth in sentencing laws. Accordingly, Subtitle A directs the Attorney General to award grants to construct, develop, expand, modify, operate, or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that will free secure prison space for the confinement of violent offenders.

Fifty percent of the total amount of funds appropriated each year will be allocated for Truth in Sentencing Incentive Grants and the other 50 percent will be allocated for Violent Offender Incarceration Grants, 85 percent of which is to be distributed by specified formula with the remaining 15 percent available for discretionary grant awards.

The formula amount available to carry out the grant programs for any fiscal year will be allocated to each eligible state based on Part 1 violent crime data reported to the Federal Bureau of Investigation for use in the Uniform Crime Reports (UCR). If such data is unavailable, applicants may also utilize figures as reported in publications by the Bureau of Justice Statistics (BJS). (See, e.g., "Census of State and Local Correctional Facilities, 1990.")

The statute contemplates the availability of $7.9 billion in funding over six years, beginning with $175 million authorized in fiscal year 1995. It is important to note, however, that Congress appropriated only $24.5 million for Subtitle A programs for fiscal year 1995. Moreover, the Appropriations Act limits these funds to

a discretionary grant program for the construction of correctional boot camps. Specifically, grant awards in fiscal year 1995 are to develop, construct, or expand boot camp programs which include coordinated, intensive aftercare services following release. It is anticipated that program guidelines and information outlining the application process for adult and juvenile boot camp fiscal year 1995 grant awards will be available in January 1995.

Statement of the Problem

State and local prison populations continue to grow. Moreover, there are a number of states and local jurisdictions under court order because of overcrowding in their correctional facilities. The majority of jurisdictions operate above the total rated capacity for their correctional facilities. Those facilities under court order for overcrowding which have taken steps to control their burgeoning inmate populations tend to operate at or near capacity in order to remain in compliance with the court orders.

Correctional systems faced with rising prison populations and court-ordered ceilings have responded in various ways. Some have implemented population management task forces to ensure that violent criminals are not released as a result of accommodating nonviolent offenders. Others have simply released offenders when their institutions reach a certain population level, without significant controls over the security classifications of the inmates. Still other systems under court order have implemented statutory release programs.

The Violent Crime Control and Law Enforcement Act of 1994

Subtitle A provides for immediate assistance to correctional systems to contend with this growing inmate population crisis. Of primary importance is the recognition that there must be adequate conventional confinement space for violent offenders, both adults and juveniles, to serve a substantial portion of their sentences. This program, therefore, provides grants to assist correctional systems in managing a comprehensive approach which will provide for the confinement of violent offenders; help address the problems associated with overcapacity in correctional facilities through the improvement, development, expansion or modification of present facilities and programs; and support comprehensive programs and treatment that will assist in reducing recidivism.

Federal, State and Local Partnerships

Because crime is primarily a state and local issue, the Subtitle A grant program envisions a federal, state, and local collaboration to address the problems associated with the incarceration and punishment of violent offenders. State and local government officials were involved in the congressional hearings that guided this legislation, and will continue to be involved as the Department of Justice moves forward in establishing policy guidance, developing regulations, and implementing program guidelines.

In addition, this grant program provides flexibility to states and local governments in utilizing federal funds to plan, construct, and operate correctional facilities in ways that best meet their needs and in the most cost-effective manner. Built into the program is the recognition that correctional systems can use grant funds in a variety of ways to ensure the greatest and most timely impact.

Under Subtitle A, corrections systems will have the ability to quickly bring on-line additional bed space in facilities which, although construction has been completed, are not being utilized due to funding constraints. States and local agencies can also activate prison and jail expansion and juvenile corrections projects that have been planned, but not launched, due to lack of funds. The grant program further provides for the expansion of alternative correctional options for nonviolent offenders which will free secure bed space for dangerous offenders to serve their sentences.

Moreover, corrections systems will have flexibility in using surplus federal property. Beds for violent offenders can be made available in secure facilities through the conversion of closed military facilities or other appropriate federal facilities to facilities for housing low-security inmates.

Subtitle A also recognizes the benefits of regional prisons, particularly for adjoining localities. The economies of scale resulting from a multi-state compact prison are particularly beneficial for confining specialized groups of offenders, such as medical/psychiatric inmates, inmates requiring protective custody, and high security inmates.

The grant program balances appropriate accountability through various eligibility criteria, the availability of technical assistance, and the evaluation of programs implemented with these funds, with the flexibility states and local governments require and deserve based on their individual needs and expertise. Grant eligibility criteria specifically provide for the involvement of counties and local governments and the sharing of funds with these entities.

Moreover, the federal role provides sufficient structure and definition in the eligibility criteria to meet the program's goals, while allowing for judgment by grant recipients to take into account the states' various unique situations, criminal and juvenile justice practices, and correctional systems. The program accounts for the different needs of the states and local entities, and reflects that there is no "national standard" approach that will suit all jurisdictions. The grant monies are available for the range of correctional needs such as system planning and facility development, as well as the construction, expansion, modification, improvement, and operation of a variety of correctional facilities.

Violent Juvenile Crime

Concern also continues nationwide over the escalation in violent juvenile crime. According to the FBI's Uniform Crime Reports, juvenile arrests for violent offenses increased dramatically over the five-year period from 1988 to 1992—47 percent—while adult violent crime arrests increased 19 percent. The estimated 129,600 Violent Crime Index arrests of juveniles in 1992 was the highest in our history, with 3,300 arrests for murder, 6,300 for forcible rape, 45,700 for robbery and 74,400 for aggravated assault. Moreover, during the past few years, there has been a marked escalation of homicides by juvenile offenders. Teenage homicides have more than doubled since 1984, and juvenile homicides involving firearms have increased 175 percent since 1983. Of particular importance is that the size of the current 14–17 year-old population, which has been responsible for much of the recent youth violence, will increase by about 20 percent in the next decade.

The "Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders," developed by the Department's Office of Juvenile Justice and Delinquency Prevention, is the centerpiece of the Department's response to growing juvenile crime. The Subtitle A grant program is an integral part of the comprehensive strategy's intervention component. The program is based on the recognition that an effective model for the treatment and rehabilitation of delinquent offenders must combine accountability and sanctions with increasingly intensive treatment and rehabilitative efforts at every stage of the continuum.

The intervention component calls for establishing a range of graduated sanctions that includes both immediate interventions and intermediate sanctions, including both nonresidential and residential placements and programming. Boot camps offer an intermediate sanction for nonviolent juvenile offenders. These programs should be short-term and include a formal aftercare phase, actively involving the family and the community in supporting and reintegrating the juvenile into the community.

While the strategy encourages the use of non-residential community-based programs and intensive supervision programs for many juvenile offenders, it recognizes that the criminal behavior of some serious, violent and chronic offenders requires the use of secure detention and corrections facilities to protect the community and provide a structured treatment environment. This grant program will facilitate jurisdictions in meeting the challenge of placing juvenile offenders in need of confinement in secure facilities.

Grants for Correctional Facilities

The Subtitle A authorization provides for two different grant programs: (1) Violent Offender Incarceration Grants, and (2) Truth in Sentencing Incentive Grants. Of the total federal funding authorized to Subtitle A grant programs each year, 50 percent is allocated for each of these two grant initiatives. With the exception of a limited discretionary grant program, this funding will be distributed to states based on the formula specified in Subtitle A. Although the statute provides for states and multi-state compacts as the only eligible grant recipients, Subtitle A requires that states involve counties and other units of local government and share funds received under this program with them.

To be eligible to receive funding under either of the Subtitle A programs, states must comply with a series of assurances involving sentencing policies and practices and other guarantees of sound correctional systems to ensure that violent offenders are sufficiently incapacitated and that the public is protected.

Included in the assurances are requirements that the state: (1) Implement sentencing reforms that ensure violent offenders receive sufficiently severe punishments, (2) recognize the rights and needs of crime victims, and (3) develop a comprehensive correctional management plan that includes diversion programs, particularly drug diversion programs, community corrections programs, systems designed to accurately evaluate and classify inmates within the system, and programs and treatment designed to assist in reducing recidivism, including rehabilitation and treatment programs and job skills. Emphasis will be placed on a corrections system's ability to plan for and implement these basic components of a comprehensive and coordinated approach to correctional policy.

Comprehensive Correctional Planning

By definition, a comprehensive system involves state and local governments; thus, the development of a comprehensive plan necessitates a partnership and collaboration among state and local entities. Because the flow of offenders begins at the local level, both local and state governments play key roles in the punishment of offenders through alternative sanctions and incarceration in correctional facilities. The input of county and municipal juvenile and criminal justice officials will be considered essential to creating an effective overall state strategy to meet the goals of this grant program. Both local and state governments also have a strong interest in any change in the capacity of any component of the corrections system. The statutory assurances are clear in their intent that states are expected to share funds with local units of government in support of effective implementation of the comprehensive plan.

Participants in the comprehensive plan development should represent a broad mix of interested and involved organizations and officials from varying perspectives. Every effort should be made by the state to include mayors, city and county officials, police departments, sheriffs, judges, prosecutors, community corrections administrators, representatives from the treatment and education communities and indigent defense, concerned citizens, and victims' advocates, as well as the juvenile justice system. Applicants should also take an active role in involving state and juvenile justice administrative agencies and advisory boards. The manner in which criminal and juvenile justice functions are structured in various states and their relationships with other justice agencies will affect the roles played in the development of an effective correctional plan.

The comprehensive correctional plan must address how the state has involved local jurisdictions and the plan for sharing funds with local facilities, truth in sentencing and victims' rights issues, and the continuum of correctional options required for adult and juvenile offenders. It must meet the overall goal of incarcerating violent offenders, and must convey the options for nonviolent offenders that will free up traditional bed space to accomplish that goal.

Victims' Rights and Needs

To be eligible to receive grants, states must provide assurances that they have implemented policies that provide for the recognition of the rights and needs of crime victims. No specific requirements for complying with this condition are prescribed by this interim rule in relation to fiscal year 1995 funding because of the need for comprehensive review of the status of victims' rights measures in state systems. State applications for fiscal year 1995 funding should include information on measures which are in effect or under consideration in the state to protect the rights and interests of crime victims.

More definitive guidance will be provided concerning compliance with this condition in a final rule or related guidelines for funding in fiscal year 1996 and thereafter. Areas that have been identified as implicating important rights and needs of crime victims include: (1) Providing notice to victims concerning case and offender status, (2) providing an opportunity for victims to be present at public court proceedings, (3) providing victims the opportunity to be heard at sentencing and parole hearings, (4) providing for restitution and other compensation to victims, and (5) establishing administrative mechanisms or other mechanisms to effectuate these rights.

States that expect to seek funding under this program in fiscal year 1996 or thereafter are encouraged to review the status of victim rights measures in their systems, particularly with reference to the five areas identified above. Federal law incorporates significant measures in each of these areas for federal cases. The provisions of federal law governing these issues may be useful for states as a possible model for reform, if they have not already adopted similar measures in their own systems. See 42 U.S.C. 10606(b)(3), (7), 10607(c) (notice concerning case and offender status); 42 U.S.C. 10606(b)(4) (right to be present at public court proceedings); Rule 32 of the Federal Rules of Criminal Procedure, as amended effective December 1, 1994 (right of allocution in sentencing for victims); 18 U.S.C. 3663, 3553(c) (general restitution provisions for federal cases); 42 U.S.C. 10607(a) and (b), 10607(c)(5) (assignment of

responsibility for victim-related functions).

Truth in Sentencing Incentive Grants

To be eligible to receive funding under the Truth in Sentencing Grant Program, in addition to meeting the assurances listed in Subtitle A, states must also meet certain sentencing requirements. In particular, to qualify for this part of the grant program, states must have in effect sentencing laws that either provide for violent offenders to (1) serve not less than 85 percent of their sentences, or (2) meet other requirements that ensure that violent offenders, and especially repeat violent offenders, remain incarcerated for substantially greater percentages of their imposed sentences.

The Office of Justice Programs is aware that the vast majority of states will at present have difficulty in meeting the condition that violent offenders serve at least 85 percent of the sentence imposed. No specific guidance for complying with this assurance is prescribed at this time both because funding for this program is not available in FY '95, and also because of the need for further review of state compliance issues. Moreover, we are particularly interested in comments from the field on compliance issues and on the definition of "violent offender" for purposes of truth in sentencing grant awards.

FY 1995 Correctional Boot Camp Initiative

The availability of funds each year is, of course, limited by the appropriations process. In fiscal year 1995, Congress has allocated $24.5 million to Subtitle A grant programs and has imposed additional limitations on the uses of these grant funds.

Consistent with congressional intent, grant awards in fiscal year 1995 will be for construction-related costs of correctional boot camps and will be allocated through the discretionary grant component of the Violent Offender Incarceration Grant Program. Construction-related costs are broadly interpreted to include costs associated with both the planning and development of the facility. OJP is expressly precluded, however, from funding operating expenses.

Specifically, grant funds can be used to plan, develop, construct, or expand adult and juvenile boot camp programs which must include coordinated, intensive aftercare services for inmates following release. Pursuant to the requirements specified in Subtitle A, boot camps are correctional programs of no longer than six-months incarceration and must: (1) Exclude offenders who have at any time been convicted of a violent felony or similarly adjudicated juveniles, (2) adhere to a regimented schedule, (3) provide for inmate participation in education, job training and substance abuse counseling or treatment, and (4) coordinate intensive aftercare services with the services provided during the period of confinement.

The program emphasis in fiscal year 1995 will be on the construction, renovation and expansion of correctional boot camp facilities that will free conventional prison, jail and juvenile correctional space for the confinement of violent offenders so they can serve a substantial amount of their imposed sentences. To receive funds, correctional systems will have to demonstrate, through a comprehensive correctional plan and prisoner screening and security classification system, that (1) there is a need for additional secure confinement space for violent offenders, and (2) this need will be met through the construction of a boot camp facility that provides housing otherwise unavailable for nonviolent offenders.

With regard to juvenile facilities, priority will be given to juvenile boot camps that are designed to prevent juvenile offenders at risk from becoming violent offenders. This desired outcome will most likely be accomplished if the jurisdiction engages in efforts that maximize the likelihood that juvenile boot camp participants would otherwise be incarcerated in traditional secure facilities (e.g., participation limited to those youths who have been adjudicated delinquents and who have been sentenced to the juvenile state correctional agency). Among this population, juvenile offenders whose escalating patterns of delinquent behavior indicate that an authoritative boot camp intervention is likely to suppress or abate emerging tendencies towards chronic or violent delinquent behavior should be considered prime candidates for boot camp participation.

To be eligible to receive grants for correctional boot camp construction, states must meet the eligibility criteria outlined for the Violent Offender Incarceration Grant Program, including the assurances specified in Section 20101(b) of Subtitle A.

Detailed program guidelines and application material for the fiscal year 1995 correctional boot camp initiative will be available in January 1995.

Technical Assistance and Training/ Evaluation

In keeping with the intent of Congress to assist states in meeting these assurances, the Department proposes to designate up to 10 percent of the funds available in this program to provide technical assistance and training to states that presently do not meet the required general assurances or want to expand and improve on current efforts in these areas. Specifically, the Department will provide training and assistance to states with the comprehensive corrections planning process, the development of truth in sentencing statutes, and in otherwise moving toward compliance with the required conditions. States which meet the general assurances in fiscal year 1995, or are working toward compliance, will be in a better position to receive grant monies under these programs over the next several years.

Further, it is the intent of the Department that selected federal initiatives under the new anti-crime law be evaluated. To accomplish this goal, a portion of the overall funds authorized under this Subtitle will be set aside for purposes of implementing a national evaluation strategy. Recipients of funds must agree to cooperate with federally-sponsored evaluations of their projects and to conduct evaluations as required by the national evaluation strategy. In addition, recipients of program funds will be required to conduct a local assessment and report on program implementation.

Request for Comments

In submitting comments, please be cognizant of the above-described statutory limitations. In administering the Subtitle A, Correctional Facilities Grant Program, OJP seeks to fulfill congressional intent by ensuring that the statutory limitations are applied appropriately to all recipients.

Comments are particularly encouraged with respect to the following definitions and implementation policy issues:

(1) Definition of "Violent Offender" [§ 91.2(a), § 91.4(b)] (This interim rule reserves the issue for now, but the Department will issue a final rule based on comments received, in advance of the implementation of Subtitle A in fiscal year 1996);

(2) Definition of "Serious Drug Offense" [§ 91.4(b)];

(3) How a state can demonstrate compliance with the assurance that it has implemented, or will implement, correctional policies and programs, including "truth in sentencing laws that: (a) "ensure that violent offenders serve a substantial portion of the sentences imposed," (b) "are designed to provide sufficiently severe punishment for violent offenders,

including violent juvenile offenders," and (c) "the prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public." [§ 91.2(i), § 91.3(b)(1)];

(4) How a state can demonstrate compliance with the condition to "provide for the recognition of the rights and needs of crime victims" [§ 91.3(b)(2)];

(5) How a state can demonstrate that, as a result of the funds received under this section, secure space will be made available for the confinement of violent offenders [§ 91.3(b)(3)];

(6) How to ensure that states have met the condition to involve and share funds received with counties and other units of local government [§ 91.3(b)(5)];

(7) How to define the scope of the Comprehensive Correctional Plan [§ 91.3(d)]; and

(8) How a state can demonstrate compliance with the condition for receiving Truth in Sentencing Incentive Grants, i.e., "persons convicted of violent crimes serve not less than 85% of the sentence imposed" [§ 91.4(b)].

In soliciting comments on the above definitions and key policy implementation issues, OJP hopes to forge a productive federal/state/local partnership in addressing the challenge of providing an effective criminal justice system response to the increased numbers of violent offenders.

The final rule will address all comments submitted and substantive differences incorporated will be explained.

Administrative Requirements

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

The Assistant Attorney General for the Office of Justice Programs in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

No information collection requirements are contained in this rule. Any information collection requirements contained in future application notices for programs authorized by this rule will be reviewed by the Office of Management and Budget (OMB), as is required by the provisions of the Paperwork Reduction Act, 91 U.S.C. 3504(h).

This regulation is being published as an interim final rule, without prior publication of notice and comment, and is made effective immediately, for good cause as explained below. Under 5 U.S.C. 553(a)(2), matters relating to grants are exempted from notice and comment requirements. Moreover, in this case, advance notice and comment would be impractical and contrary to the public interest. Title II, Subtitle A of the Violent Crime Control and Law Enforcement Act of 1994 requires the publication of regulations implementing the grant program within 90 days of enactment of the Act.

In order to satisfy congressional requirements and intentions of expeditious implementation, these regulations are effective immediately so that eligible states may apply for the boot camp discretionary program. Publishing a notice of proposed rulemaking and awaiting receipt of comments would significantly delay the implementation of the FY '95 boot camp grant program. Such delay would be contrary to the public interest and would contradict the congressional intent to provide immediate grant assistance.

Although OJP will proceed expeditiously with regard to the promulgation of guidelines for the fiscal year 1995 boot camp program, we are very interested in receiving public comment on the overall program and will consider all comments in preparing the final rule.

List of Subjects

Grant programs, Judicial administration.

For the reasons set out in the preamble, Title 28, Chapter I, of the Code of Federal Regulations is amended by adding a new part 91 as set forth below.

PART 91—GRANTS FOR CORRECTIONAL FACILITIES

Subpart A—General

Sec.

91.1 Purpose.
91.2 Definitions.
91.3 General eligibility requirements.
91.4 Truth in Sentencing Incentive Grants.
91.5 Violent Offender Incarceration Grants.
91.6 Matching Requirement.

Subpart B—FY 95 Correctional Boot Camp Initiative

91.10 General.

Authority: Section 20105 of Subtitle A, Title II of the Violent Crime Control and Law Enforcement Act of 1994.

Subpart A—General

§ 91.1 Purpose.

The Attorney General, through the Assistant Attorney General for the Office of Justice Programs, will make grants to states and to states organized as multi-state compacts to construct, develop, expand, operate or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that can free conventional space for the confinement of violent offenders, to:

(a) Ensure that prison space is available for the confinement of violent offenders; and

(b) Implement truth in sentencing laws for sentencing violent offenders.

§ 91.2 Definitions.

(a) *Violent Offender*—[Reserved]

(b) *Serious Drug Offense* means an offense involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance [as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)], for which a maximum term of imprisonment of 10 years or more is prescribed by state law.

(c) *Part 1 Violent Crimes* means murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports. If such data is unavailable, Bureau of Justice Statistics (BJS) publications may be utilized. See, e.g., "Census of State and Federal Correctional Facilities, 1990." ("Part 1 Violent Crimes" are defined here solely as the statutorily prescribed basis for the formula allocation of funding.)

(d) *Recipient* means individual states or multi-state compacts awarded funds under this Part.

(e) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam and the Northern Mariana Islands.

(f) *Comprehensive Correctional Plan* means a plan which represents an integrated approach to the management and operation of adult and juvenile correctional facilities and programs and which includes diversion programs, particularly drug diversion programs, community corrections programs, a prisoner screening and security classification system, appropriate professional training for corrections officers in dealing with violent offenders, prisoner rehabilitation and

treatment programs, prisoner work activities (including to the extent practicable, activities relating to the development, expansion, modification, or improvement of correctional facilities) and job skills programs, educational programs, a pre-release prisoner assessment to provide risk reduction management, post-release assistance and an assessment of recidivism rates.

(g) *Correctional facilities* includes boot camps and other alternative correctional facilities for adults or juveniles that can free conventional bed space for the confinement of violent offenders.

(h) *Boot camp* means a corrections program for adult or juvenile offenders of not more than six-months confinement (not including time in confinement prior to assignment to the boot camp) involving:

(1) Assignment for participation in the program, in conformity with state law, by prisoners other than prisoners who have been convicted at any time for a violent felony;

(2) Adherence by inmates to a highly regimented schedule that involves strict discipline, physical training, and work;

(3) Participation by inmates in appropriate education, job training, and substance abuse counseling or treatment; and

(4) Post-incarceration aftercare services for participants that are coordinated with the program carried out during the period of imprisonment.

(i) *Truth in sentencing laws* means laws that:

(1) Ensure that violent offenders serve a substantial portion of sentences imposed;

(2) Are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders; and

(3) The prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public.

§ 91.3 General Eligibility Requirements.

(a) Recipients must be individual states, or states organized as multi-state compacts.

(b) Application Requirements. To be eligible to receive either a formula or a discretionary grant under Subtitle A, an applicant must submit an application which includes:

(1) Assurances that the state(s) have implemented, or will implement, correctional policies and programs, including truth in sentencing laws. No specific requirements for complying with this condition are prescribed by this interim rule for fiscal 1995 funding because of the need for further review of the status of truth in sentencing laws and the impact and needs requirements relating to reform in state systems.

(2) Assurances that the state(s) have implemented or will implement policies that provide for the recognition of the rights and needs of crime victims.

States are not required to adopt any specific set of victims rights measures for compliance, but the adoption by a state of measures which are comparable to or exceed those applied in federal proceedings will be deemed sufficient compliance for eligibility for funding. If the state has not adopted victims rights measures which are comparable to or exceed federal law, the adequacy of compliance will be determined on a case-by-case basis. States will be afforded a reasonable amount of time to achieve compliance. States may comply with this condition by providing recognition of the rights and needs of crime victims in the following areas:

(i) providing notice to victims concerning case and offender status;

(ii) providing an opportunity for victims to be present at public court proceedings in their cases;

(iii) providing victims the opportunity to be heard at sentencing and parole hearings;

(iv) providing for restitution to victims; and

(v) establishing administrative or other mechanisms to effectuate these rights.

(3) Assurances that funds received under this section will be used to construct, develop, expand, operate or improve correctional facilities to ensure that secure space is available for the confinement of violent offenders.

(4) Assurances that the state(s) has a comprehensive correctional plan in accordance with the definition elements in § 91.2. If the state(s) does not have an adequate comprehensive correctional plan, technical assistance will be available for compliance. States will be afforded a reasonable amount of time to develop their plans.

(5) Assurances that the state(s) has involved counties and other units of local government, when appropriate, in the construction, development, expansion, modification, operation or improvement of correctional facilities designed to ensure the incarceration of violent offenders and that the state(s) will share funds received with counties and other units of local government, taking into account the burden placed on these units of government when they are required to confine sentenced prisoners because of overcrowding in state prison facilities.

(6) Assurances that funds received under this section will be used to supplement, not supplant, other federal, state, and local funds.

(7) Assurances that the state(s) has implemented, or will implement within 18 months after the date of the enactment of the Violent Crime Control and Law Enforcement Act of 1994 (September 13, 1994), policies to determine the veteran status of inmates and to ensure that incarcerated veterans receive the veterans benefits to which they are entitled.

(8) Assurances that correctional facilities will be made accessible to persons conducting investigations under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997.

(9) If applicable, documentation of the multi-state compact agreement that specifies the construction, development, expansion, modification, operation, or improvement of correctional facilities.

(10) If applicable, a description of the eligibility criteria for participation in any boot camp that is to be funded.

(c) States, and states organized as multi-state compacts, which can demonstrate affirmative responses to the assurances outlined above will be eligible to receive funds.

(d) Each state application for such funds must be accompanied by a comprehensive correctional plan. The plan shall be developed in consultation with representatives of appropriate state and local units of government, shall include both the adult and juvenile correctional systems, and shall provide an assessment of the state and local correctional needs, and a long-range implementation strategy for addressing those needs.

(e) Local units of government, i.e., any city, county, town, township, borough, parish, village or other general purpose subdivision of a state, or Indian tribe which performs law enforcement functions as determined by the secretary of the Interior, are in turn eligible to receive subgrants from a participating state(s). Such subgrants shall be made for the purpose(s) of carrying out the implementation strategy, consistent with state(s) comprehensive correctional plan.

(f) In awarding grants, consideration shall be given to the special burden placed on states which incarcerate a substantial number of inmates who are in the United States illegally. States will not be required to submit additional information on numbers of criminal aliens. The Bureau of Justice Assistance (BJA) and the Immigration and Naturalization Service (INS) are currently working together to implement the State Criminal Alien

Assistance Program (SCAAP) to assist the states with the costs of incarcerating criminal aliens. The Office of Justice Programs will coordinate with the SCAAP program to obtain the relevant information.

§ 91.4. Truth in Sentencing Incentive Grants.

(a) Half of the total amount of funds appropriated to carry out Subtitle A for each of the fiscal years 1996, 1997, 1998, 1999 and 2000 will be made available for Truth in Sentencing Incentive Grants.

(b) Eligibility. To be eligible to receive such a grant, a state, or states organized as multi-state compacts, must meet the requirements of § 91.3 and must demonstrate that the state(s)—

(1) has in effect laws which require that persons convicted of violent crimes serve not less than 85% of the sentence imposed; or

(2) Since 1993—

(i) has increased the percentage of convicted violent offenders sentenced to prison;

(ii) has increased the average prison time which will be served in prison by convicted violent offenders sentenced to prison;

(iii) has increased the percentage of sentence which will be served in prison by violent offenders sentenced to prison; and

(iv) has in effect at the time of application laws requiring that a person who is convicted of a violent crime shall serve not less than 85% of the sentence imposed if—

(A) the person has been convicted on 1 or more prior occasions in a court of the United States or of a state of a violent crime or a serious drug offense; and

(B) each violent crime or serious drug offense was committed after the defendant's conviction of the preceding violent crime or serious drug offense.

(c) Formula Allocation. The amount available to carry out this section for any fiscal year will be allocated to each eligible state in the ratio that the number of Part 1 violent crimes reported by such state to the Federal Bureau of Investigation for 1993 bears to the number of Part 1 violent crimes reported by all states to the Federal Bureau of Investigation for 1993.

(d) Transfer of Unused Funds. On September 30 of each fiscal years 1996, 1998, 1999 and 2000, the Attorney General will transfer to the funds to be allocated under the Violent Offender Incarceration Grant formula allocation (section 91.5) any funds made available to carry out this section that are not allocated to an eligible state under paragraph (b) of this section.

§ 91.5 Violent Offender Incarceration Grants.

(a) Half of the total amount of funds appropriated to carry out this subtitle for each of fiscal years 1996, 1997, 1998, 1999 and 2000 will be made available for Violent Offender Incarceration Grants.

(b) Eligibility. To be eligible to receive such a grant, a state, or states organized as multi-state compacts, must meet the requirements of section 91.3(b).

(c) Allocation of Violent Offender Incarceration Funds—

(1) Formula Allocation. 85% of the sum of the amount available for grants under this section for any fiscal year and any amount transferred as described in section 91.4(c) for that fiscal year will be allocated as follows:

(i) 0.25% will be allocated to each eligible state except that the United States Virgin Islands, American Samoa, Guam and the Northern Mariana Islands shall each be allocated 0.05%.

(ii) The amount remaining after application of paragraph (c)(1)(i) of this section will be allocated to each eligible state in the ratio that the number of Part 1 violent crimes reported by such state to the Federal Bureau of Investigation for 1993 bears to the number of Part 1 violent crimes reported by all states to the Federal Bureau of Investigation for 1993.

(2) Discretionary Allocation. Fifteen percent of the sum of the amount available for Violent Offender Incarceration Grants for any fiscal year under this subsection and any amount transferred as described in § 91.4(c) for that fiscal year will be allocated at the discretion of the Assistant Attorney General for OJP to states that have demonstrated:

(i) the greatest need for such grants, and

(ii) the ability to best utilize the funds to meet the objectives of the grant program and ensure that secure cell space is available for the confinement of violent offenders.

(d) Transfer of Unused Funds. On September 30 of each fiscal years 1996, 1997, 1998, 1999 and 2000, the Assistant Attorney General will transfer to the discretionary program under paragraph (c)(2) of this section any funds made available under paragraph (c)(1) of this section that are not allocated to an eligible state under paragraph (c)(1) of this section.

§ 91.6 Matching Requirement.

(a) The federal share of a grant received under this subtitle may not exceed 75 percent of the costs of a proposal described in an application approved under this subtitle. The matching requirement can only be met through a hard cash match, and must be satisfied by the end of the project period. A certification to that effect will be required of each recipient of grant funds and must be submitted to the Office of Justice Programs with the application.

Subpart B—FY 95 Correctional Boot Camp Initiative

§ 91.10 General.

(a) Scope of Boot Camp Program. Funding is appropriated in fiscal year 1995 to provide grants to states and multi-state compacts to plan, develop, construct and expand correctional boot camps for adults and juveniles.

(b) Adult and juvenile boot camps, referred to as "correctional boot camps," are programs that "provide a structured environment for delivering non-traditional corrections programs to criminal offenders."

(c) With respect to this program, the mandates of the Juvenile Justice and Delinquency Prevention Act (42 U.S.C. Sec. 5601 et seq.) shall apply.

(d) *Eligibility.* (1) Funding is available for both adult and juvenile boot camps. To be eligible for the funding of boot camps, states must comply with the general assurances in § 91.3(b) or demonstrate steps taken toward compliance. While the majority of assurances are applicable to the adult correctional system, those states applying for grants for juvenile boot camps must include the juvenile system in the state comprehensive correctional plan and demonstrate how construction of the boot camp will make secure space available to house violent juvenile offenders.

(2) For purposes of the FY '95 boot camp program, a "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or an act of juvenile delinquency that would be punishable by imprisonment for such term if committed by an adult, that:

(i) involves the use or attempted use of a firearm or other dangerous weapon against another person, or

(ii) results in death or serious bodily injury to another person.

(3) States must document that the boot camp program does not involve more than six-months confinement (not including confinement prior to assignment to the boot camp) and includes:

(i) assignment for participation in the program, in conformity with state law, by prisoners other than prisoners who have been convicted at any time of a violent felony;

(ii) adherence by inmates to a highly regimented schedule that involves strict discipline, physical training and work;

(iii) participation by inmates in appropriate education, job training, and substance abuse counseling or treatment; and

(iv) post-incarceration aftercare services for participants that are coordinated with the program carried out during the period of imprisonment.

(4) States must provide assurances that boot camp construction will free up secure institutional bed space for violent offenders.

(e) *Evaluation.* (1) Recipients will be required to cooperate with a national evaluation team throughout the planning and implementation process. Recipients are also strongly encouraged to provide for an independent evaluation of the impact and effectiveness of the funded program.

(2) Jurisdictions are strongly encouraged to engage in systematic planning activities and to develop and evaluate boot camps as part of a comprehensive and integrated correctional plan.

(f) Limitation on funds. Grant funds cannot be used for operating costs. States will be required to show how operating expenses will be provided.

(g) Matching Requirement. The federal share of a grant received may not exceed 75 percent of the costs of the proposed boot camp program described in the appoved application. The matching requirement can only be met through a hard cash match, and must be satisfied by the end of the project period; facility operating expenses may not be used to meet the match requirement for the construction project supported. Match may be made through grantee contribution of construction-related costs. A certification to that effect will be required of each recipient of grant funds.

(h) Innovative Boot Camp Programs. Jurisdictions are encouraged to explore the development of "innovative" boot camp programs which incorporate principles based on the accumulation of research and practical experience, and reflect sound and effective correctional practice.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs

[FR Doc. 94–29963 Filed 12–6–94; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore 94–030]

RIN 2115–AE84

Regulated Navigation Area Regulation; Ice Operations in Chesapeake Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Ice Navigation Season Regulated Navigation Area on the northern portion of the Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal, will be implemented December 1, 1994.

The regulations for this Regulated Navigation Area, found in 33 CFR 165.503, state that they shall be placed in effect and terminated at the direction of the Captain of the Port Baltimore by notice in the **Federal Register.**

The purpose of this Regulated Navigation Area is to provide mariners transiting the Regulated Navigation Area notice of the time period in which this regulation shall be effective. The purpose of this regulation is to enhance the safety of navigation in the affected waters by requiring operators of certain vessels, during their vessel's transit of the Regulated Navigation Area, to be aware of currently effective Ice Navigation Season Captain of the Port Orders issued by the Captain of the Port Baltimore.

EFFECTIVE DATE: This regulation is effective 12 am, December 1, 1994, and shall continue until April 30, 1995 as necessary for the safe transit of vessels in the area unless sooner terminated by the Captain of the Port. Cancellation Notice will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

Eugene Zimbalkin, Chief Warrant Officer, U.S. Coast Guard Marine Safety Office Baltimore, Customs House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–2651.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are Eugene Zimbalkin, Chief Warrant Officer, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

Dated: November 29, 1994.

G.S. Cope,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 94–30055 Filed 12–6–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Baltimore 94–031]

RIN 2115–AA97

Safety Zone Regulation; Inner Harbor Fireworks Display, Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: With this regulation, the Coast Guard Marine Safety Office Baltimore is establishing two temporary safety zones for the New Years Eve Inner Harbor fireworks display. These safety zones are necessary to control spectator craft and to provide for the safety of life and property on U.S. navigable waters during this event. Entry into these zones is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation will be effective from 11 p.m. December 31, 1994 until 1 a.m. January 1, 1995 with an alternate date of January 1, 1995 from 6 p.m. to 8 p.m.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Eugene Zimbalkin, U.S. Coast Guard Marine Safety Office, Baltimore Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–5118.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. The original application to hold this event was not submitted until October 25, 1994 to Coast Guard Group Baltimore. Because of the late original submission date and the additional changes there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent hazards to the boating community.

Background and Purpose

The Baltimore Office of Promotion requested a safety zone for the Baltimore Inner Harbor fireworks display to take place December 31, 1994/January 1,

1995 with an alternate date of January 1, 1995. Because of the way the fireworks display will be set up, the Coast Guard Marine Safety Office Baltimore has determined that two separate safety zones will be necessary to protect the public and control spectator craft during this event.

Discussion of Regulations

The Coast Guard Marine Safety Office Baltimore is establishing safety zones around two fireworks barges that will be anchored in the Inner Harbor, Baltimore, Maryland. One barge (Barge A) will be anchored in the middle of the Inner Harbor Basin, 250 yards off of the west sea wall and the second barge (Barge B) will be anchored approximately 400 yards west of the West Channel Turning Basin.

Safety Zone (A) will be around barge A and will encompass all waters of the Inner Harbor that lie within a circle with a radius of 200 feet, with the center of the circle being the fireworks barge A. Safety Zone (B) will be around barge B, and will encompass all waters of the Inner Harbor that lie within a circle with a radius of 840 feet, with the center of the circle being fireworks barge B.

Spectators that wish to watch the fireworks display aboard their vessels may anchor outside of the safety zones, but they may not anchor in or block a navigable channel. Patrol craft will be on hand to assist the boating public and ensure safety of life and property during the event.

Since the Inner Harbor will not be closed for an extended period during these safety zones, vessel traffic should not be severely disrupted.

Drafting Information

The drafters of this regulation are Chief Warrant Officer Eugene Zimbalkin, project officer for the Captain of the Port, Baltimore, Maryland and Lt. Kathleen A. Duignan, project attorney Fifth Coast Guard District Legal Staff.

Regulatory Evaluation

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

Small Entities

This regulation will only be in effect for two hours, therefore, the Coast Guard expects the impact of this rule to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.C. of Commandant Instruction M16475.1B, and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231: 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. In part 165 a temporary section 165.T05–097 is added to read as follows:

§ 165.T05–097 Safety Zone: Inner Harbor Fireworks Display, Patapsco River, Inner Harbor, Baltimore, MD.

(a) Location. The following areas are safety zones:

(1) Safety Zone (A) will encompass all waters of the Inner Harbor, Patapsco River which lie within a circle with a radius of 200 feet, with the center of the circle being a fireworks barge (Barge A) located at approximately:

Latitude	*Longitude*
39°17'03" N.	76°36'33" W.

(2) Safety Zone (B) will encompass all waters of the Inner Harbor, Patapsco River which lie within a circle with a radius of 840 feet, with the center of the circle being a fireworks barge (Barge B) located at approximately:

Latitude	*Longitude*
39°16'37" N.	76°35'53" W.

(b) Definitions. The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(c) General information. The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5100. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zones can be contacted on VHF–FM channels 13 and 16.

(d) Regulations.

(1) In accordance with general regulations in § 165.23 of this part, entry into safety zones A and B is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel which enters into or operates in safety zones A and B shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(e) Effective dates. This section becomes effective from 11 p.m. December 31, 1994 until 1 a.m. January 1, 1995 with an alternate date of January 1, 1995 from 6 p.m. to 8 p.m. unless terminated sooner by the Captain of the Port, Baltimore, Maryland.

Dated: November 29, 1994.

G.S. Cope,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 94–30056 Filed 12–6–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Savannah 94–123]

RIN 2115–AA97

Safety Zone Regulations; Savannah River, Savannah, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving safety zone for the departure of the Deck Barge Isle Del Sol and the Escorting Tugs on the Savannah River. The safety zone is needed to preempt the possibility of collision between converging vessels due to the large beam required in the river channel by the Deck Barge's cargo.

EFFECTIVE DATES: This regulation becomes effective between November 21, 1994 and December 19, 1994, with times as published in Coast Guard District Seven local notice to mariners.

FOR FURTHER INFORMATION CONTACT: LT. J.A. Simmerman, Marine Safety Office Savannah at Tel: (912) 652–4353, between the hours of 0730 and 1600, Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent possible hazards to mariners.

Drafting Information

The drafters of this regulations are LT. J.A. Simmerman, project officer for the Captain of the Port, Savannah, Georgia, and LT. J.M. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The Coast Guard is establishing a moving safety zone for the departure of the Deck Barge Isle Del Sol and the Escorting Tugs on the Savannah River from Marcona Ocean Industries Dock, Fort Jackson continuing throughout its transit until it is east of the Colreg Demarcation Line. The zone will consist of an area within a 50 yard radius around the tugs and deck barge during its transit in the Savannah River. The Captain of the Port has restricted vessel operations in this safety zone. No persons or vessels will be allowed to enter or operate within this zone, except as may be authorized by the Captain of the Port, Savannah, Georgia. This regulation is issued pursuant to 33 U.S.C. 1231, as set out in the authority citation of all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and the proposed rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.C of Commandant Instruction M16475.1B and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Regulatory Evaluation

These regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone will be in effect for a total of 8 hours between November 21, 1994 and December 19, 1994. The specific times are as published in Coast Guard District Seven local notice to mariners.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary section § 165.T07–123 is added to read as follows:

§ 165.T07–123 Safety Zone: Savannah River, Savannah, GA.

(a) *Location.* The following area is a moving safety zone for the departure of the Deck Barge Isle Del Sol and the Escorting Tugs on the Savannah River from Marcona Ocean Industries Docks, Fort Jackson continuing throughout its transit until it is east of the Colreg Demarcation Line. The zone will consist of an area within a 50 yard radius around the tug and deck barge during its transit in the Savannah River.

(b) *Effective dates.* This section will be effective between November 21, 1994 and December 19, 1994 with times as published in Coast Guard District Seven local notice to mariners.

(c) *Regulations.*

In accordance with the general regulations in Section 165.23 of this part, entry into the zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or a representative of the Captain of the Port.

(2) The representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Savannah, GA, to act on his behalf. The representative of the Captain of the Port will be abroad a Coast Guard vessel.

(3) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 652–4353. Vessels assisting in the enforcement of the safety zone may be contacted on VHF–FM channels 16 or 13, or vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the safety zone.

(5) The Captain of the Port will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety zone and restrictions imposed.

Dated: November 20, 1994.

M.H. Johnson,

Commander, U.S. Coast Guard, Captain of the Port, Savannah, Georgia.

[FR Doc. 94–30054 Filed 12–6–94; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 251, 252, 253, 257, and 259

[Docket No. RM 94–1A]

Copyright Arbitration Royalty Panels

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is adopting final regulations governing the conduct of royalty distribution and rate adjustment proceedings prescribed by the Copyright Royalty Tribunal Reform Act of 1993.

EFFECTIVE DATE: These regulations are effective on January 6, 1995.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024, (202) 707–8380.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Tribunal Reform Act of 1993, Pub. L 103–198, 107 Stat. 2304, eliminated the Copyright Royalty Tribunal (CRT) and replaced it with a system of *ad hoc* Copyright Arbitration Royalty Panels (CARPs) administered by the Librarian of Congress (Librarian) and the Copyright Office (Office). The CARPs adjust royalty rates and distribute royalties collected under the various compulsory licenses and statutory obligations of the Copyright Act. The CRT Reform Act, which was effective immediately upon enactment, directed the Librarian and the Office to adopt the rules and regulations of the CRT found in chapter 3 of 37 CFR, 17 U.S.C. 802(d), and provided that the CRT's regulations were to remain in effect until the Librarian adopts "supplemental or superseding regulations." The Office adopted the CRT's rules and regulations on an interim basis on December 22, 1993, and notified the public that it intended to begin a rulemaking proceeding to revise and update those rules. 58 FR 67690 (1993).

The Office began the rulemaking proceeding with publication of a Notice of Proposed Rulemaking (NPRM) on January 18, 1994. 59 FR 2550 (1994). The NPRM contained substantial revisions required by the dual structure of the royalty rate adjustment and distribution system created by the CRT Reform Act. Since the CRT's rules were designed for a single administrative body, the Office proposed extensive changes to accommodate the division of authority between the Librarian and the Copyright Office on the one hand, and the CARPs on the other. In addition to inviting written public comment, the Copyright Office invited interested parties to a public meeting to discuss the proposed regulations. More than 50 individuals attended the February 1, 1994, meeting.

I. Interim Regulations

After considering the concerns the parties expressed at the February public meeting, and thoroughly reviewing the written comments, the Copyright Office issued Interim Regulations on May 9, 1994. 59 FR 23964 (1994).[1] The Interim Regulations substantially revised and updated the rules adopted in December of 1993.

The need for immediate adoption of a regulatory framework was underscored by the imminence of a royalty distribution of money collected under the Audio Home Recording Act of 1992 for digital audio recording technology (DART). Section 1007(b), 17 U.S.C., requires determination of a DART controversy and commencement of arbitration proceedings on March 30 of each year for the prior year's royalty collections. The 1992 DART distribution proceeding was begun by the Copyright Royalty Tribunal but was suspended when the Tribunal was abolished, and therefore needed to be started anew. The 1993 DART distribution was begun by the Copyright Office under the new authority conferred by the CRT Reform Act, and on March 1, 1994, the Office published a notice in the **Federal Register** asking the claimants to the 1992 and 1993 DART royalties to comment as to the existence of any controversies in the royalty funds. 59 FR 9773 (1994).

Anticipating a consolidated DART distribution proceeding for the 1992 and 1993 calendar years, the Copyright Office postponed the date for determination of DART controversies from March 30, 1994, to June 30, 1994, in order to permit adequate time for the adoption of regulations governing a CARP proceeding. On May 9, 1994, the Office adopted the Interim Regulations with the intention that they would govern any DART controversies and proceedings beginning June 30, 1994.

The Office created a new subdivision of the regulations devoted entirely to the operation and procedures of the CARPs. We removed parts 301 through 311 of chapter III of 37 CFR and created subchapters A and B of chapter II. Subchapter A comprises the Copyright Office rules and procedures, consisting of parts 201–211, and remains unchanged. New subchapter B, created by the Interim Regulations, comprises parts 251–259, and prescribes the rules and procedures of the CARPs.

Part 251, the Copyright Arbitration Royalty Panel Rules of Procedure, consists of regulations governing the organization of the CARPs, access to CARP meetings and records, rules governing the conduct and course of proceedings, and procedures applicable to rate adjustments and distributions. Part 251 also includes extensive rules of conduct for arbitrators, as well as appropriate ethical and financial standards. We did not propose any specific rules of conduct in the NPRM, but did reserve a subpart for such rules and solicited comment from the interested parties on the issue. *See* 59 FR at 2554 (1994).

Part 252 contains revised rules for the filing of claims to cable royalties, modeled after the system used by the CRT for the filing of DART royalty claims. Parts 253 to 256—Use of Certain Copyrighted Works in Connection With Noncommercial Educational Broadcasting; Adjustment of Royalty Rate for Coin-Operated Phonorecord Players; and Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords—is virtually identical to the former CRT's rules, with only some minor technical changes. Like part 252, part 257—Filing of Claims to Satellite Carrier Royalty Fees—is modeled after the royalty claim procedures used by the CRT for DART. Finally, parts 258 and 259—Adjustment of Royalty Fee for Secondary Transmissions by Satellite Carriers and Filing of Claims to Digital Audio Recording Devices and Media Royalty Payments—contains only minor variations from the former CRT's rules. Since the CRT Reform Act eliminated the jukebox compulsory license and replaced it with a new provision for negotiated licenses (formerly section 116A of the Copyright Act, as amended by the CRT Reform Act), the Copyright Office dropped the regulations governing the filing of jukebox royalty claims (formerly 37 CFR part 305).

In addition to soliciting general comments on the Interim Regulations, the Copyright Office also posed a

[1] The Copyright Office also published technical corrections to the Interim Regulations. 59 FR 33201 (1994).

number of questions to focus the commentators' attention on specific issues and to encourage the parties to offer their solutions. The questions ranged from whether certain types of DART proceedings were subject to CARP jurisdiction, 59 FR 23967 (1994), to asking for comment on ten hypothetical scenarios designed to test the parameters of the conduct rules. *Id.* at 23980.

Written comments on the Interim Regulations were due June 15, 1994. Reply comments were due July 15, 1994.[2] The Copyright Office received a total of 14 comments and replies. Many parties filed joint comments, and some of the joint commentators also filed separate comments. The commentator groups for comments and/or replies were as follows:

Canadian Claimants (Canadian Claimants);
Electronic Industries Association (EIA);
James Cannings (Cannings);
Joint Sports Claimants, the National Association of Broadcasters, Public Broadcasting Service, the Devotional Claimants, the Canadian Claimants, and National Public Radio (collectively Certain Copyright Owners);
National Association of Broadcasters (NAB);
National Music Publishers Association and the Harry Fox Agency (collectively "Music Publishers");
Office of the Commissioner of Baseball (Baseball);
Program Suppliers (Program Suppliers);
Program Suppliers, Joint Sports Claimants, the National Association of Broadcasters, Public Broadcasting Service, American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., the Devotional Claimants, the Canadian Claimants and National Public Radio (collectively Copyright Owners);
Public Broadcasting Service and National Public Radio (collectively PBS/NPR);
Recording Industry Association of America, Inc. ("RIAA");
Recording Industry Association of America, Inc. and the Alliance of Artists and Recording Companies, Inc. (RIAA/AARC).

II. Suspension of DART Distribution

As discussed above, the Office adopted the Interim Regulations to establish a regulatory framework in time for the start of DART distribution. The Office postponed the date for determination of controversies to the 1992/93 DART royalty pools from March 30, 1994, to June 30, 1994, to prepare for the possibility of convening a CARP for DART distribution. We published a request for comment on the existence of a controversy for the 1992/93 funds, adopted the Interim Regulations, established a procedural schedule for the filing of comments and motions leading up to a convocation of a CARP, and published the arbitrator list all before June 30. *See* 59 FR 9773 (1994) (Request for comments as to existence of controversy and consolidation of 1992 and 1993 funds); 59 FR 23964 (1994) (Interim Regulations); 59 FR 25506 (1994) (Schedule of procedural dates); 59 FR 24486 (1994) (Arbitrator list).

In response to the Office's request for comments as to the existence of controversies, the Office received a motion, supported by a majority of the 1992/93 DART claimants, requesting that the 1992/93 DART royalty distribution be consolidated with the 1994 DART distribution. The movants argued that although they anticipated the existence of controversies, the amount of royalties in the 1992 and 1993 funds was insufficient to justify the cost of a CARP proceeding. They therefore requested that the Office suspend all procedural dates and defer all consideration of DART distributions until 1995.

On July 13, 1994, the Librarian of Congress granted the claimants' motion for suspension of the 1992/1993 DART distribution proceeding and consolidation of that proceeding with the 1994 DART distribution. 59 FR 35762 (1994). The result of the Librarian's action is that the first DART distribution proceeding will begin no sooner than March 30, 1995. The Librarian also authorized distribution of the 1992 and 1993 Nonfeatured Musicians and Nonfeatured Vocalists DART subfunds—two subfunds not subject to CARP proceedings—and scheduled a public meeting for September 27, 1994, to discuss what would constitute the best evidence for distribution of the Sound Recordings Fund and the Musical Works Fund. *Id.*

With the suspension of DART until 1995, the first proceeding conducted by a Copyright Arbitration Royalty Panel will likely be distribution of the 1990 and 1991 cable royalties. The claimant groups to 1990/1991 cable royalties have informed the Copyright Office that they wish to begin proceedings in accordance with final, not interim, regulations. The Office has already received written comments on the Interim Regulations; therefore, the Copyright Office is adopting Final Regulations that will govern all rate adjustments and distributions of royalties prescribed by the CRT Reform Act.[3]

III. Joint Claims

Commentators had extensive comments about the interim rule governing the filing of joint royalty claims. Sections 252.3(4) and 257.3(4) require claimants filing a joint claim to cable and satellite carrier compulsory license royalties, respectively, to identify at least one secondary transmission containing a claimant's copyrighted works for each claimant listed in the joint claim. See 59 FR 23992, 23994 (1994). Performing rights societies were exempted from this requirement by § 252.3(a)(4) and § 257.3(a)(4). Because these sections generated much controversy, and because some of the commentators filed a motion requesting that the Office reconsider this part of the regulations, we find that the issue deserves reconsideration and resolution separate from the general discussion of amendment to the Interim Regulations.

The former CRT's rules and regulations governing the filing of claims of the CRT, which we adopted on an interim basis in December 1993, are brief. Section 302.7(a) of the CRT's old rules simply permitted the filing of joint claims for cable royalties, but provided little else:

> For purposes of this clause claimants may file claims jointly or as a single claim. Such filing shall include such information as the Copyright Royalty Tribunal may require. A joint claim shall include a concise statement of the authorization for the filing of the joint claim. A performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard agreements, for purposes of this filing and fee distribution.

37 CFR 302.7(a) (1993). To the Copyright Office's knowledge, the Tribunal never adopted or prescribed any additional requirements for the filing of joint claims, nor was there any guidance on what information should be included in a claim. Section 309 of the Tribunal's rules, governing the filing of claims to satellite carrier royalties, was even more concise with respect to the requirements for filing joint claims.

[2] In addition, the Copyright Office met with representatives from ASCAP, BMI, the Canadian Claimants, the Devotional Claimants, the Joint Sports Claimants, NAB, NPR, PBS, and Program Suppliers on August 11th on matters pertaining to cable copyright royalty distribution. The minutes of that meeting are associated with the comment file and are available for public inspection and copying.

[3] It is important to note that while today's Final Regulations replace the rules contained in the Interim Regulations, there are several policy determinations and decisions discussed in the preambles to the Interim Regulations and Notice of Proposed Rulemaking which remain in effect. For example, the Office will continue to consider proceedings pending before the CRT at the time of its elimination as null and void and without binding effect. *See* 59 FR at 23965–66 (1994). Parties practicing before the CARPs should therefore be familiar with the preambles to the Interim Regulations and the NPRM in this docket in conjunction with today's Final Regulations.

stating simply that "[c]laimants may file jointly or as a single claim," and providing the same exemption for performing rights societies regarding authorizations. 37 CFR 309.2 (1993).

Our NPRM proposed significant revisions to the Tribunal's rules regarding the filing of both cable and satellite carrier royalty claims. 59 FR 2556, 2557 (1994). The purpose of the proposed revision was to "implement a procedural system similar to that adopted by the Tribunal for the filing of digital audio claims." *Id.* at 2556. Claimants were expressly authorized to file joint claims, and would be required to file "a concise statement of the authorization for the filing of the joint claim." *Id.* at 2566 (cable), 2567 (satellite). Performing rights societies would continue to enjoy an exemption from obtaining separate authorizations from each of their members for filing a joint claim. For claimants initially filing an individual claim and later negotiating a joint claim with other claimants, the proposed rules required that either the joint or individual claimant notify the Copyright Office of the change within 14 days of making the agreement to enter into a joint claim. *Id.* Finally, the proposed rules required joint claimants to "make available to the Copyright Office, other claimants, and, where applicable, a Copyright Arbitration Royalty Panel, a list of all individual claimants covered by the joint claim." *Id.* No mention was made as to whether each joint claimant was required to identify at least one secondary transmission of its works, beyond the general language of §§ 253.3(a)(4) (cable) and 257.3(a)(4) (satellite) establishing the basis for a claim: "A general statement of the nature of the claimant's copyrighted works and identification of at least one secondary transmission * * * establishing a basis for the claim." *Id.*

The Office's proposed changes to the requirements for filing cable and satellite carrier royalty claims elicited little comment. Only PBS asked for clarification of the requirement for identifying a secondary transmission for a joint claim; it asked what it took to satisfy the requirement—a statement that merely identified at least one secondary transmission for at least one of the claimants included within the joint claim, or a statement identifying at least one secondary transmission for each claimant to the joint claim. *See* 59 FR 23979 (1994) (comments of PBS at 2). In discussing PBS' comment in the Interim Regulations, we acknowledged that the NPRM "muddie[d] the waters" for the filing of cable and satellite carrier claims, and the Interim Regulations deleted the proposed requirement for joint claimants providing a list identifying each claimant to the joint claim. Id. In so doing, we stated our belief that the former Tribunal's regulations required that a joint claim identify at least one secondary transmission for *each* joint claimant, and found support for such requirement in the Copyright Act:

> We are troubled, however, by changing what had been a longstanding requirement at the Tribunal for obliging all claimants to identify at least one secondary transmission of their copyrighted works. While such requirement does undoubtedly add to the time and expense burdens of joint claimants such as PBS, it is not without purpose. The law states plainly that cable compulsory license royalties are only to be distributed to "copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period." 17 U.S.C. 111(d)(3). To support such a claim, each claimant may reasonably be asked to identify at least one secondary transmission of his or her work, thus permitting the Copyright Office to screen the claims and dismiss any claimants who are clearly not eligible for royalty fees. The requirement will also help to reduce time spent by a CARP determining which claimants have a valid claim: if only one secondary transmission is identified for one of the joint claimants, then it could not readily be determined if the other claimants were even eligible for cable royalties.
>
> In an effort to end this confusion we are deleting subsection (e) with its requirement that joint claimants submit a list identifying all the claimants. Instead, we are amending subsection (a)(4) to require that each claimant to a joint claim, other than a joint claim filed by a performing rights society on behalf of its members or affiliates, must identify at least one secondary transmission of his or her works.

59 FR 23979 (1994).

A number of commentators protested the Office's decision. PBS/NPR, the Office of the Commissioner of Baseball (Baseball), RIAA, NAB and Program Suppliers submitted comments devoted solely to the filing requirements for joint claims, with Program Suppliers asking that reconsideration of the joint claims interim regulations be severed from the instant proceeding for immediate disposition. *See* Program Suppliers, comments at 5.

The commentators offered essentially four arguments against the Office's decision: (1) to require each joint claimant to identify a secondary transmission containing its work serves no valid purpose; (2) it creates undue expense; (3) the Copyright Office is erroneous in believing that the Copyright Royalty Tribunal required each joint claimant to identify a secondary transmission; and (4) it is unfair and inappropriate to afford performing rights societies an exemption and not others.

First, PBS/NPR argued that "no substantive purpose is served by the requirement for separate identifications of secondary transmissions as to each party included within the joint claim; this is simply a jurisdictional prerequisite that will not determine the distribution of royalties." PBS/NPR, comments at 2. Program Suppliers concurred with this view and criticized the Office's expressed concern that individual program information is needed to assist it and the CARPs to identify claims that should be dismissed:

> [T]he Office's suggestion that such information is needed so it could screen hundreds of yearly filings to determine eligibility, seems a particularly inefficient use of its resources. * * * Furthermore, it is unclear what action, if any, the Office could take regarding eligibility problems related to an individual claimant within a joint claim. Even if the Office finds that one claimant is ineligible to receive royalties, we would assume that the joint claim would still remain a valid claim. Whether and to what extent the share awarded to the joint claimants should be reduced by the ineligibility of one member of the group are questions for a panel based on the record evidence. Indeed, such questions are incapable of answers at the filing stage.

Program Suppliers, comments at 3–4 (footnote omitted). Program Suppliers and Baseball recommended that the Office should refrain from any examination or "screening" of claims as a regular practice, and leave such activities and eligibility issues to the claimants to raise through motions either to the Librarian or the CARPs. Program Suppliers, comments at 4; Baseball, comments at 7.

Second, RIAA asserted that the requirement for each joint claimant to identify a secondary transmission is unduly expensive and burdensome. Organizations like RIAA, that represent many claimants, would be forced to contact all of their members and track down a secondary transmission for each one. The problem is compounded by the time lag between most secondary transmissions and the time period for filings of claims. RIAA, comments at 2–3. PBS submits that it devotes roughly 300 hours annually to the task of identifying secondary transmissions for its member stations. PBS/NPR, comments at 2. These commentators submitted that elimination of the identification requirement for all joint claimants would dramatically reduce their expense and workload.

Third, all of the commentators argued that the Copyright Office erred in believing that the Copyright Royalty Tribunal required each joint claimant to identify a secondary transmission. Apparently, while a reading of the CRT's rules indicated there may be such a requirement, *see* footnote 15, 59 FR 23979 (1994), in actual practice the Tribunal allowed joint claimants to submit only one secondary transmission of a copyrighted work belonging to one of the joint claimants as establishing a basis for a claim for all of the joint claimants. Baseball and RIAA submitted several examples of such filings. Baseball, comments at appendix; RIAA, comments at appendix. They asserted that the CRT interpreted its rules to apply the requirement of identification of at least one secondary transmission to apply equally to individual claims as well as joint claims, meaning that identification of a least one secondary transmission of one joint claimant was satisfactory to establish a basis for the entire joint claim. PBS/NPR, comments at 4–5. They therefore submitted that the Copyright Office erroneously interpreted CRT practice and should alter its regulations to conform with CRT precedent. PBS/NPR comments at 6; Program Suppliers, comments at 5; RIAA, comments at 6; Baseball, comments at 5; NAB, comments at 1.

Finally, Baseball, PBS/NPR, and RIAA objected to the exemption granted performing rights societies from the Interim Regulations' requirement of identifying at least one secondary transmission for each joint claimant. Baseball stated that it "is firmly of the view that it should not be treated less favorably than the performing rights societies," noting that the Interim Regulations gave no reason why performing rights societies should enjoy privileged status. Baseball, comments at 5. *See also* PBS/NPR, comments at 5. RIAA urged that, if the Copyright Office insists on continuing to require each joint claimant to identify a secondary transmission, it should broaden the definition of a performing rights society "to include not only traditional performing rights societies, but also those joint claimants such as RIAA who, with respect to the royalties distributed to its members under sections 111 and 119, essentially perform the same functions of 'performing rights societies.'" RIAA, comments at 6.

In addition to seeking relief from §§ 252.3(a)(4) and 257.3(a)(4), several commentators urged the Copyright Office to reconsider other requirements for the filing of cable and satellite carrier royalty claims. Baseball and the RIAA urged the Copyright Office to eliminate entirely the requirement of identifying a secondary transmission to establish a basis for a cable or satellite carrier royalty claim. Baseball, comments at 5–7; RIAA, comments at 3, 6. Baseball noted several instances where the CRT refused to dismiss a claim for failure to identify a secondary transmission, and suggested this demonstrates that "the secondary transmission identification requirement did nothing more than unnecessarily increase the costs of claimants." Baseball, comments at 6. NAB, however, strongly opposed Baseball's recommendation, asserting that there is no compelling reason to change the requirement and that elimination of identification of a secondary transmission would be violative of section 111(d)(3) of the Copyright Act, which authorizes distribution of royalties only to copyright owners whose works were retransmitted on a distant signal. NAB, comments at 2–3.

Baseball took the "hands off" approach one step further by urging the Copyright Office to refrain from making any substantive review of royalty claims. Baseball, comments at 6–7. *See also* NAB, comments at 2; Copyright Owners, reply comments at 9. Baseball argued that "[r]outine Copyright Office review of all claims needlessly increases the costs of all copyright owners and does not serve any useful function," concluding that "[d]isputes over a particular claimant's eligibility to royalties (when they arise) may be resolved internally within a Phase II class without involvement of the Copyright Office or a CARP." Baseball, comments at 7–8. Copyright Owners concurred, stating that "[t]he parties themselves are in the best position to identify those claimants who are not entitled to royalties," and that they "do not believe...that the Copyright Office's resources (and Copyright Owners' royalties) should be expended to screen each and every one of the thousands of claims that will be timely filed over the years." Copyright Owners, reply comments at 9–10. Copyright Owners do not object, however, to the Copyright Office returning claims that are not timely filed. *Id.* at 9.

Given the pendency of receipt of cable and satellite carrier royalty claims and the request of Program Suppliers to sever the joint claims issue from this proceeding, the Copyright Office issued an Order addressing the filing requirements for joint claims for the 1993 cable and satellite carrier royalties. *Order* in Docket Nos. RM 94–1A; 94 CARP (93–CD); 94 CARP (93–SD)(July 13, 1994). The Office stated that while it would "make a decision on the requirement for joint claims when we publish the final rules," it would waive the requirement of identification of a secondary transmission for each joint claimant in § 252.3(a)(4) and § 257.3(a)(4) for the July 1994 filing period. As a result of this action, anyone filing a joint claim for 1993 cable or satellite carrier royalties was only required to identify at least one secondary transmission to establish a basis for the entire joint claim.

The Copyright Office has reviewed the comments of the parties regarding the identification of a secondary transmission requirement for joint claims and is amending § 252.3(a)(4) and § 257.3(a)(4) to require identification of at least one secondary transmission for each joint claim, as opposed to at least one for each joint claimant.[4] We have stated on several occasions that our intention in implementing the CRT Reform Act is to create a streamlined process that limits the cost of distribution and rate adjustment proceedings to the participating parties as much as possible. *See e.g.* 59 FR 23967 (1994). It is apparent from the unanimous opinion of the commentators that requiring identification of a secondary transmission for each joint claimant would add in some cases a substantial burden and cost to joint claimants without yielding an appreciable return in administrative efficiency. We are also aware that, in the past, the CRT did not require identification of a secondary transmission for each joint claimant.[5] The practice of the CRT was apparently an unwritten policy, and therefore of questionable precedential value, but it does demonstrate that the Tribunal did not experience any practical or administrative difficulties in allowing joint claimants to identify at least one secondary transmission for the entire joint claim.

The amended rule, however, does require each joint claim to identify all claimants participating in the joint claim. Those who are not identified in the joint claim may not be added to it after the filing period. An exception, however, is made for the performing rights societies when they file cable and satellite carrier claims. If ASCAP, BMI and SESAC were to file a joint claim,

[4] In amending these sections, we are also eliminating the exemption for performing rights societies filing joint claims, since the amended rules will treat all joint claimants equally.

[5] It would appear from the comments that while Baseball, after consultation with the Tribunal, would only include some examples of secondary transmissions in their joint claim, PBS would include an example for each one of the claimants represented in its joint claim. PBS/NPR, comments at 2.

those three organizations would have to be listed in the claim, but when ASCAP, BMI and SESAC file claims separately, they will not have to list their members or affiliates because of the burden of doing so, and the recognition that, together, they represent virtually every composer, lyricist, and publisher entitled to royalties.[6] A similar exception is not being made for the performing rights societies in the case of DART claims. There, it is not clear that the performing rights societies represent virtually the entire composer-lyricist-publisher universe, because they have an affirmative duty to obtain a separate written authorization to collect on behalf of their members and affiliates and it is unknown how many of them they represent, and because there are other organizations such as the Harry Fox Agency and the Songwriters Guild who file claims in that proceeding.

While we are eliminating the requirement of identification of a secondary transmission for each joint claimant, we are not accepting RIAA and Baseball's recommendation of eliminating the secondary transmission identification requirement altogether. We agree with NAB that section 111(d)(3) of the Copyright Act authorizes distribution of cable royalties only to copyright owners whose works were retransmitted on a distant signal. Eliminating the requirement that the claim identify at least one instance of such qualifying retransmission would effectively eviscerate the claim requirement itself. *See* NAB, comments at 3. The argument has equal force for satellite carrier royalty claims. *See* 17 U.S.C. 119(b)(3).

The Office also does not accept Baseball, NAB, and Copyright Owners' recommendation that the Office not review claims for eligibility and sufficiency. Section 801(c) expressly allows the Librarian, before a CARP is convened, to "make any necessary procedural or evidentiary rulings that would apply to the proceedings conducted by such panel." We believe that this grant of authority is broad enough to allow the Copyright Office to examine royalty claims for timeliness and sufficiency. Furthermore, we do not accept Baseball and NAB's argument that review of claims is a waste of copyright owners' money. Eliminating claims which are untimely filed or patently deficient on their face promotes administrative efficiency by reducing the workload for the CARPs, which will already be pressed to conduct proceedings and issue a report within the 180-day time period. The Copyright Office will, therefore, continue to examine royalty claims for timeliness and sufficiency on their face.

[6] By this statement, we do not intend to prejudge controversies in the Music category. We know that there are composers, lyricists, and publishers, such as ACEMLA and Italian Book Corporation, who are unaffiliated with the three performing rights societies. However, to the extent that they file claims separate from the three performing rights societies, they become identified in the filing period as independent, leaving for future proceedings their proper share vis-a-vis the performing rights societies.

IV. Precontroversy Discovery

Of all the issues generated by the CRT Reform Act and the transfer of royalty distributions and rate adjustments to the Librarian and the CARPs, precontroversy discovery has generated the greatest amount of comment and concern. The questions are general (Should there be any precontroversy discovery? Who should conduct it?), as well as specific (What discovery motions may be filed? When and how will discovery orders be issued?). We have examined this controversial issue extensively and considered all of the arguments. We are adopting as our final rule a solution that we hope will streamline the evidentiary process for the CARPs: a limited discovery period of 45 days conducted by the Librarian prior to declaration of a controversy requiring exchange of cases among the participating parties and one round of discovery motions and rulings.

The question of whether or not to have precontroversy discovery, defined as a period for exchange of evidence among the parties to a distribution or rate adjustment proceeding prior to the Librarian's declaration of a controversy and convocation of a CARP, has come full circle during the course of this rulemaking proceeding. In reaction to a statement of Representative William Hughes, Chairman of the House Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary, accompanying the passage of the CRT Reform Act and commenting favorably on the use of precontroversy discovery and exchange of information, *see* 139 Cong. Rec. H10973 (daily ed. Nov. 22, 1993), the Copyright Office proposed a precontroversy discovery period in the NPRM. In the case of distributions, we proposed that the Librarian would declare a 90-day period for discovery and exchange of documents sometime after the filing of royalty claims for the distribution and ending with the declaration of the controversy. 59 FR 2550 (Jan. 18, 1994). Similarly, the Librarian would declare a 90-day period for rate adjustment proceedings corresponding with the time period set aside for consideration of rate adjustment petitions. Any party to a proceeding could file motions related to discovery with the Librarian during these time periods, as well as "objections to royalty claims or petitions, or motions for procedural or evidentiary rulings." *Id.* All parties were to be given 14 days in which to respond to a motion or objection, and the Librarian could not declare a controversy in a proceeding until he had ruled on all motions. *Id.*

In addition to the proposed precontroversy discovery procedures, the Office asked for comment on several matters:

> We particularly seek comments on the scope of such precontroversy discovery: whether it should include interrogatories of witnesses as well as production of supporting documents, and whether it would advance Chairman Hughes' goal of reducing costs by being able to stipulate facts and remove issues, or whether the additional procedures might add costs to the proceeding.

Id.

The commentators did not approve of the NPRM's precontroversy discovery proposal. In fact, the commentators urged the Librarian and the Copyright Office to refrain completely from conducting any precontroversy discovery, and proposed a unique solution whereby the CARPs could be convened for conducting such discovery prior to the beginning of the 180-day arbitration period. *See* 59 FR 23964, 23976 (1994). Under the proposal offered by Copyright Owners, a distinction would be made between "the commencement of proceedings" in 17 U.S.C. 803(d) and the "notice initiating an arbitration proceeding" described in 17 U.S.C. 802(b) and (e). The Copyright Office would first declare the "commencement of proceedings" and then immediately require the filing of written direct cases and empanel the CARP; discovery motions and objections would be ruled on by the CARP. After discovery was completed, the Office would "initiate an arbitration proceeding," and at that point the statutory 180-day arbitration period would begin to run. 59 FR 23977 (1994) (comments of Copyright Owners at 9–12).

We considered the statutory basis for Copyright Owners' proposal and concluded with respect to the Interim Regulations that it was without support:

> [A]s a matter of statutory construction, the Office cannot agree that the "commencement of proceedings" can be conceptually separated from "initiating an arbitration proceeding" so as to permit the CARP to sit earlier than the 180-day arbitration period. Section 802(b) (of the Copyright Act), which first uses the phrase "initiating an arbitration

proceeding," employs it in the context of "a notice in the **Federal Register** initiating an arbitration proceeding under section 803 * * *" In § 803, the notice to which § 802(b) refers is the "notice of commencement of proceedings." Therefore, the phrases refer to each other and must be considered synonymous. (parenthetical added).

59 FR 23977 (1994). We acknowledged that Chairman Hughes recommended that our regulations provide for precontroversy discovery "to the extent practicable," but concluded that "there is no way to accomplish this goal under the statutory scheme." *Id.* The result was that the Interim Regulations contained no rules for precontroversy discovery or exchange of documents.

Copyright Owners have changed their approach[7] and now seek restoration of a precontroversy discovery procedure similar to the one proposed by the Office in the NPRM. The Copyright Owners' proposal has three principal facets: (1) mandatory exchange of direct cases among all parties to a proceeding prior to commencement of arbitration; (2) formal scheduling of a precontroversy discovery period by the Librarian; and (3) submission of and ruling on direct case discovery motions and objections by the Librarian, including motions, objections, and petitions contemplated in §§ 251.4, 251.41(b) and 251.45(a) of the Interim Regulations.

Copyright Owners argue that in order for precontroversy discovery to be in any way productive, the Copyright Office rules must be amended to require the parties to a proceeding to exchange their direct cases prior to the commencement of arbitration, as opposed to after a CARP has been convened. Copyright Owners, comments at 3–5, 7–10. They assert that without an exchange of direct cases, precontroversy discovery would become a fishing expedition as the parties attempt to guess at each other's theory of the case and principal evidence. Exchange of direct cases would allow the parties to focus on the evidence that will be presented at a hearing and reduce the amount of time the CARPs will need to devote to discovery matters. *Id.* at 3–4.

In order to streamline the process and promote efficiency, the Copyright Owners suggest that the Librarian coordinate and schedule the precontroversy discovery process. Under the Copyright Owners' plan for distribution proceedings, the Librarian would first publish a notice seeking comment as to the existence of a controversy.[8] *Id.* at 8. The notice would specify a filing date for comments, request that interested parties file their notice of intent to participate in the proceeding with their comments, and ask the participating parties for their comments on scheduling issues. *Id.* After receipt of the comments and participation notices, the Librarian would evaluate the existence of controversies, and then issue a scheduling order that would provide:

1. dates for the filing of:
(a) motions and objections contemplated by § 251.45(a) of the Interim Regulations;
(b) petitions to dispense with formal hearings under § 251.41 (b); and
(c) objections to arbitrators under § 251.4;
2. a date for the filing of direct cases by parties;
3. dates for discovery by the parties and for filing of discovery and evidentiary motions;
4. a date by which the Librarian will rule on discovery and evidentiary motions; and
5. a future date certain on which each identified controversy will be declared and the initiation of an arbitration proceeding will be published.

Id. at 9. Copyright Owners recommend that "scheduling should be done on a case-by-case basis reflecting the comments from the parties; the rules themselves should not contain particular time periods for filing deadlines." *Id.*

Copyright Owners argue that statutory authority for the above-recommended procedures can be found in section 801(c) of the Copyright Act, which permits the Librarian "before a Copyright Arbitration Royalty Panel is convened, [to] make any necessary procedural or evidentiary rulings that would apply to the proceedings conducted by such panel." *Id.* at 10. This provision, they argue, coupled with Chairman Hughes' expressed desire for precontroversy discovery, indicates the legislative intent to have a formal and organized precontroversy discovery period.

Aside from satisfying legislative intent, Copyright Owners submit that their proposed plan offers advantages. Setting a date certain for declaration of controversies and commencement of arbitration in the scheduling order will give potential arbitrators sufficient advance notice to plan their schedules, thereby increasing the likelihood of their being able to serve. *Id.* at 11. Also, having the Librarian rule on prehearing discovery and other motions allows the parties to prepare their cases properly and permits the full 180-day period to be devoted to hearing, briefing, and decision on the merits. *Id.* at 12.

We have carefully considered the views of the Copyright Owners with respect to precontroversy discovery, especially in light of their request that the CARPs conduct precontroversy discovery and our earlier proposal set forth in the NPRM. For reasons stated in the Interim Regulations, *see* 59 FR 23977, we do not believe that it is statutorily permissible to convene a CARP prior to the beginning of the 180-day arbitration period for the purposes of conducting precontroversy discovery. We reaffirm our decision that the CARPs cannot conduct or permit discovery prior to the beginning of the 180-day arbitration period.

After considering the proposal of the Copyright Owners, however, we do think that it is appropriate that the Librarian of Congress and the Copyright Office conduct some precontroversy discovery. We are therefore adopting a precontroversy discovery procedure similar to that now being endorsed by the Copyright Owners and initially proposed in the NPRM.

We therefore amend § 251.45 of the rules to provide a procedure for conducting precontroversy discovery. New paragraph (b) directs the Librarian to designate a 45-day period for the conduct of precontroversy discovery. The Librarian shall designate the dates for the 45-day precontroversy discovery period on a case-by-case basis after receiving and reviewing comments on the existence of controversies and notices of intention to participate described in § 251.45(a). During this time period, the parties will exchange their written direct cases and the Librarian will entertain motions and objections regarding discovery matters, motions and objections to dismiss any party's royalty claim, motions for declaratory rulings or for procedural or evidentiary rulings, petitions to dispense with formal hearings under § 251.41(b), and objections to arbitrators under § 251.4.

As stated in the Interim Regulations, "[w]e agree with the Copyright Owners that precontroversy discovery before the filing of written direct cases would not be productive." 59 FR 23977 (1994). The 45-day precontroversy discovery period therefore shall begin with an exchange of written direct cases among the parties

[7] Copyright Owners ask the Copyright Office to reconsider their proposal of convening CARPs prior to commencement of the 180-day arbitration period, suggesting that the Office could consider that the phrases "notice initiating an arbitration proceeding" and "notice of commencement of proceedings" have different meanings and therefore could constitute two separate events. For the reasons described in the Interim Regulations, however, the Office is adhering to its position that CARPs may not be convened prior to the commencement of the 180-day arbitration period. *See* 59 FR 23977 (1994).

[8] Copyright Owners propose a similar plan for rate adjustment proceedings. Copyright Owners, reply comments at 7 n.5.

to the proceeding. Each party must serve one complete copy of their written direct case on each of the parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, the parties may file their motions and objections with the Librarian. Objections to any and all motions will be due seven days after the filing date for motions.

The 45-day designated period shall be the sole time for filing precontroversy motions and objections. Any motions and objections received prior to, or after, the 45-day period will be returned. The Librarian will rule on motions and objections after the 45-day period has ended and prior to the declaration of the existence of a controversy. However, motions for production of documents or to compel production of evidence should be ruled upon by the Librarian within five days of receipt of the motion so as to expedite the discovery process.

In addition to the exchange of direct cases and the filing of motions and objections, the Librarian will set the date on which controversies will be declared. We agree with Copyright Owners that fixing a date certain for declaration of controversies and initiation of arbitration proceedings will allow potential arbitrators and participating parties to clear their schedules, as well as afford the participating parties more time to prepare their cases.

The precontroversy discovery period for rate adjustment proceedings is similar to that for distributions. After receiving a petition for rate adjustment, the Librarian will issue a request for public comment or conduct public hearings to determine whether the petitioner's interest is significant,[9] and require interested parties to file a notice of intention to participate. After reviewing comments or the hearing record as to the petitioner's significant interest and receiving notices of intention to participate, and after the period described in § 251.63(a), the Librarian will issue a precontroversy discovery scheduling order identical to that for distribution proceedings. The Librarian will require exchange of direct cases, conduct the one round of motions and objections, issue appropriate rulings, and announce the date on which initiation of arbitration proceedings will begin.

We believe that these precontroversy discovery and scheduling regulations should provide a workable solution to the time pressures of distribution and rate adjustment proceedings, and should sharpen the focus of the proceedings by eliminating much of the preliminary work that would be faced by the CARPs without such procedures. We agree with the Copyright Owners that 17 U.S.C. 801(c), coupled with Chairman Hughes' floor statement regarding precontroversy discovery, provides ample statutory authority for the Librarian and the Copyright Office to conduct precontroversy discovery and issue rulings. It may be that, with some issues, the Librarian will designate the issue raised during the 45-day precontroversy discovery period to the appropriate CARP for disposition, but it is our belief that the Librarian will be able to dispose of most precontroversy discovery issues.

V. Status of Certain DART Proceedings

The Copyright Office concluded in the Interim Regulations that two categories of digital audio proceedings set forth in chapter 10 of the Copyright Act were not CARP proceedings and therefore not subject to these rules:

> (i) the proceeding raising the maximum rate for digital audio tape royalties which, under 17 U.S.C. 1004(a)(3), is to be handled solely by the Librarian;
>
> (ii) the arbitration proceeding under 17 U.S.C. 1010 to determine if a digital audio recording or interface device is subject to royalty payments.

59 FR 23967 (1994).

RIAA/AARC agrees with the Office that proceedings under section 1004(a)(3) to raise the royalty maximum should be "handled solely by the Librarian." RIAA/AARC, comments at 2. RIAA/AARC is concerned, however, with the costs involved in adjusting the royalty maximum and urges the Copyright Office to apply to DART its policy for CARP rate adjustments; that is, requiring that the burden of costs be shared equally by both copyright owners and users participating in an adjustment proceeding. *Id.* at 3 (59 FR 23977).

RIAA/AARC does not agree that arbitration proceedings under section 1010 should be treated separately and states that "the CARP system should be applied in these proceedings." *Id.* RIAA/AARC, however, offers no support for its position.

EIA supports the Copyright Office position for both section 1004(a)(3) royalty maximum adjustment and section 1010 arbitration. EIA notes that section 801 of the Copyright Act contains no reference to royalty maximum adjustments or section 1010 arbitration, and that the Copyright Office correctly observed that the former Copyright Royalty Tribunal's duty to "carry out its other responsibilities under chapter 10" was expressly repealed from section 801 in the CRT Reform Act. EIA, comments at 2. Absent jurisdictional authorization, EIA argues that section 1010 is outside the scope of the CARPs. Furthermore, EIA notes that CARP procedures are inconsistent with section 1010 arbitration; a petition initiates CARP rate adjustments whereas agreement of the parties is necessary to initiate section 1010 arbitration. *Id.* at 3 (citing section 1010(a) and (b)). Section 1010 arbitration is also governed "by such procedures as [the Arbitration Panel] may adopt," as opposed to CARP procedures adopted by the Librarian of Congress. *Id.* (citing section 1010(d)). Finally, argues EIA, section 1010 arbitration relates solely to whether given devices are subject to chapter 10 requirements and are therefore unrelated to the purpose or expertise of the CARPs to make royalty rate adjustments and distributions. *Id.* at 3–4.

In addition to its comments regarding section 1010 arbitration, EIA believes that the issue of costs regarding both section 1010 and section 1004(a)(3) proceedings is not properly before the Copyright Office since neither is a CARP proceeding. *Id.* at 4.

The Copyright Office reaffirms the conclusion announced in the Interim Regulations that proceedings under sections 1004(a)(3) and 1010 are not within the jurisdiction of the CARPs. 59 FR 23967 (1994). Proceedings to adjust the royalty maximum under section 1004(a)(3) shall therefore be handled solely by the Librarian, and proceedings under section 1010 shall not be subject to the rules and regulations governing the CARPs. It may be that an arbitration panel convened under section 1010 chooses to use some or all of the rules applicable to CARP proceedings; that choice, however, is up to the arbitration panel. *See* 17 U.S.C. 1010(d) (the arbitration panel is governed by "such procedures as it may adopt").

With respect to the division of costs among the parties participating in a section 1004(a)(3) or section 1010 proceeding, we agree with the EIA that the issue is not ripe for decision since neither of these proceedings is within the scope of this rulemaking.

VI. Costs

The issue of the costs involved in the entire CARP process was

[9] The determination of "significant" interest is not required for the noncommercial educational broadcasting and satellite carrier rate adjustments since they begin automatically as provided in sections 118 and 119 of the Copyright Act. The Librarian shall, therefore, schedule precontroversy discovery in advance of the pre-set starting dates for those proceedings.

understandably a serious concern of a number of commentators. These concerns included the payment and fees charged by arbitrators, deductions from royalty pools, and billing cycles for arbitrators. The commentators offered some unique solutions to these problems, some of which we are adopting in these Final Regulations.

Sections 251.54, 251.65 and 251.74 are the principal regulations governing the costs of CARP proceedings.[10] Section 251.54 directs the CARP panels in the case of rate adjustment proceedings to establish each participating party's share of the costs of the proceeding. In the case of distribution proceedings, each participating party's cost is in direct proportion to its share of the distribution. Sections 251.65 and 251.74 allow the Library of Congress and the Copyright Office to recover their respective costs for rate adjustment and distribution proceedings. For rate adjustments, the Librarian and Office may deduct their reasonable costs from the relevant royalty pool. If no such pool exists, then the participating parties' costs shall be assessed directly to them. In distribution proceedings, reasonable costs may be deducted directly from the relevant royalty pool.

A. Assessment of Arbitrator Costs in Distribution Proceedings

We concluded in the Interim Regulations that we did not have the authority to deduct the costs of the CARPs from the relevant royalty pool, and could only deduct our costs. We noted that this was an unsatisfactory result, and described our effort to have Congress amend the statute. 59 FR 23977 (1994). Our proposed statutory amendment would allow the Librarian and the Copyright Office to deduct a CARP's costs from the relevant royalty pool, and pay the arbitrators with such deductions, before the fees were distributed to copyright claimants.

Copyright Owners noted a problem with our proposal, specifically the provision which provided that deductions would be made "before the fees are distributed to any copyright claimants." Copyright Owners submit that this sentence could be interpreted as suggesting that all royalty fees must remain on deposit until the final deduction for the costs of a CARP proceeding has been made. Such an interpretation, they argue, "would contradict the authority to make partial distribution as found elsewhere in the statute and present a serious hardship to Copyright Owners because of the potential long delay between collection of royalty fees and their distribution after an arbitration hearing." Copyright Owners, comments at 35. They therefore recommend that the provision be amended to read "Such deduction shall be made before the fees are fully distributed to all copyright claimants." *Id.*

Aside from the legislative solution, the commentators offer other ways for handling the payment and costs of the CARPs. Copyright Owners offer a unique proposal: make a substantial partial distribution of royalties at an early stage of each distribution proceeding to an escrow account administered jointly by all of the claimants. The sole purpose of the escrow account would be to make funds available for timely payment of monthly CARP member billings, while avoiding the need for advance cash outlays from the claimants. Copyright Owners, comments at 33. Further partial distributions to the escrow account could, if necessary, be made during the proceeding, and any excess remaining after all CARP bills are paid could be distributed in accordance with the final distribution determination. *Id.*

RIAA/AARC generally supports the proposed escrow account, but expresses concern that in DART proceedings, the escrow account could be depleted by monthly CARP payments before the end of the proceeding. RIAA/AARC also points out that monthly payments in a DART distribution proceeding are problematic since there has not yet been a DART distribution decision and there is no precedent to follow for division of royalties among the claimants and each claimant's pro rata share of expenses. RIAA/AARC, reply comments at 2–3. RIAA/AARC therefore recommends that the Copyright Office deduct all CARP expenses from the royalty pool at the end of a distribution proceeding, citing 17 U.S.C. 802(h)(1) and 802(c) as providing the Office with authority to make such deductions. RIAA/AARC, comments at 5.

The method of payment of the CARPs is a problem, especially given our lack of statutory authority to pay the arbitrators directly. Unfortunately, the legislative solution discussed in the Interim Regulations, 59 FR 23977, failed for this Congress. Thus, we cannot pay the CARPs. We will seek the necessary statutory authority in the 104th Congress.

Because of our lack of authority in this area, we are not adopting any regulations governing the method of payment of CARP costs. As discussed above, the Copyright Owners proposed the creation of an escrow account, administered by the parties, to pay the arbitrators.

Compensation of the arbitrators is the responsibility of the parties to a proceeding. 17 U.S.C. 802(g). If Copyright Owners wish to establish such an escrow account, and can obtain the consent of all parties to the proceeding, they are free to do so. We note that in the proceeding to adjust royalty rates for the section 119 satellite carrier license in 1991, the parties paid an upfront sum to those arbitrators to begin the proceeding, and a final payment at the conclusion of the proceeding. We offer no opinion as to whether this is the appropriate manner in which to proceed, but offer it as a possibility to be considered by the CARPs who have the authority to direct the "manner and proportion" of payment of a CARP's costs.

B. Assessment of Library of Congress and Copyright Office Costs in Rate Adjustment Proceedings

Section 251.65 of the Interim Regulations allows the Library and Copyright Office to deduct their costs in rate adjustment proceedings from the "relevant royalty pool," and, if no such pool exists, to assess the costs directly to the parties to the proceeding. RIAA/AARC and Copyright Owners oppose deductions from royalty pools for rate adjustment proceedings.

RIAA/AARC submits that § 251.65 is contrary to the intent of the CRT Reform Act. They note that 17 U.S.C. 802(h)(1) provides for assessment of costs directly to parties where "no royalty pool exists from which [the Library and Copyright Office's] costs can be deducted—i.e. a rate adjustment proceeding." Thus, according to RIAA/AARC, deductions can only be made from royalty pools in distribution proceedings and not in rate adjustment proceedings. RIAA/AARC, comments at 10–11. Furthermore, if costs are deducted from the relevant royalty pool for rate adjustment proceedings, then copyright owners will bear the entire brunt of the proceeding in contradiction to the Office's determination that both owners and users should share the cost of rate adjustments. *Id.* at 11.

Copyright Owners believe that a portion of the costs of a rate adjustment could be deducted from a royalty pool, but submit that it is difficult to identify exactly what is the "relevant" royalty pool. Copyright Owners, reply comments at 1–2. Rate adjustment proceedings involve the setting of rates for future, not-yet-collected royalty

[10] Section 251.38 governs the accounting and costs that arbitrators are allowed to charge (meals, lodging, etc.). This section, however, relates to the ethical standards of arbitrators and is discussed in the context of subpart D of these regulations.

funds. The "relevant" pools would therefore be the future funds affected by the rate change, rather than past funds. Copyright Owners submit that the Office should therefore seek the comments of the owners as to what is the proper meaning of the word "relevant." *Id.* at 5. Furthermore, Copyright Owners argue that it is completely unfair for owners to bear all of the Office's expenses for rate adjustments, since users clearly benefit as well from the adjustments. They ask that the Office reinstate the deduction rule proposed in the NPRM which simply provides that rate adjustment costs will be assessed "directly to the parties participating in the proceedings." *Id.* at 6 (citing 59 FR at 2565 (1994)).

We agree that RIAA/AARC and Copyright Owners raise valid points with respect to § 251.65. As we stated in the Interim Regulations, we believe that the burden of the Library and Office's costs in a rate adjustment proceeding should be shared by both owners and users. We did not intend to place the burden solely on copyright owners, although it is arguable that § 251.65 appears to do that very thing. We also agree with Copyright Owners' assessment that the "relevant" royalty pool is not clear; it would seem that it may be necessary to amortize the costs over a number of royalty pools. In an attempt to solve these problems, we are therefore accepting Copyright Owners' suggestion of reinstating § 251.65 as proposed in the NPRM. The section therefore now reads:

> In accordance with 17 U.S.C. 802(h)(1), the Librarian of Congress and the Register of Copyrights may assess the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the rate adjustment proceedings directly to the parties participating in the proceedings.

C. Frivolous Claims

Both RIAA/AARC and Copyright Owners are concerned with the costs that may be generated by frivolous claimants to royalty distributions. Section 251.54(a)(2) provides that CARPs may assess their costs in direct proportion to each party's share of the distribution. Thus, a party who received 0% of the distribution would bear 0% of the costs, even though the claim of that party may have contributed greatly to the costs of the other claimants. RIAA/AARC believes that every party participating in a distribution proceeding should be prepared to bear some portion of the procedural costs, regardless of whether or not it receives any portion of the royalty fund. RIAA/AARC, reply comments at 3. They recommend that the Office adopt some type of participation fee for distribution proceedings, similar to that used by other government agencies conducting proceedings. *Id.* at 4. In lieu of a participation fee, RIAA/AARC recommends that the CARPs be granted the discretion to allocate a share of expenses of the proceeding to bad faith or frivolous claimants who receive little or no share of the distribution. *Id.* at 4–5.

Copyright Owners echo RIAA/AARC's concerns regarding frivolous claims and the added costs associated with those claimants. Copyright Owners, however, would resolve the problem by an amendment to the statute which they propose the Copyright Office seek. Such an amendment would provide that "upon a finding of bad faith or other frivolous or vexatious conduct, the Librarian may allow a different allocation of costs of the proceedings as necessary to respond to such conduct." Copyright Owners, comments at 38.

With regard to costs in distribution proceedings, section 802(c) is quite clear in providing that "the parties shall bear the cost in direct proportion to their share of the distribution." 17 U.S.C. 802(c). No provision is made to charge parties fees for participating in distribution proceedings, or assessing costs against parties for frivolous behavior or claims. We cannot imply or interpret the statute to provide for such measures, nor are we prepared to seek an amendment of the statute to allow the Librarian to make an assessment of a claimant's conduct or behavior and impose an additional share of the cost of the proceedings against that party. Since the Librarian is only charged with handling matters preliminary to the arbitration and reviewing the CARP's decision, the Librarian is not in a proper position to evaluate the conduct of participants to a proceeding. There is no authority in the statute for the CARPs to change 17 U.S.C. 802(c)'s direction to assess costs in direct proportion to each party's share of the distribution, nor is there authority for the CARPs to sanction parties or individuals to a proceeding. The CARPs are, however, in the best position to assess the conduct of the participants to a distribution proceeding. Deliberate misrepresentation to a CARP by a party or individual to a proceeding will be referred by the Copyright Office to the Justice Department for possible prosecution under the applicable provisions of title 18 of the United States Code.

D. Arbitrator Costs

Section 251.54(a) provides that a CARP may "assess its ordinary and necessary costs" to the participants to a proceeding. NMPA/HFA urges the Office to adopt a mechanism for appealing the reasonableness of fees and expenses assessed. They recommend creation of a procedure, although they do not describe what kind of procedure or when and how it could be invoked, whereby the Librarian would be available in instances where the parties question the fees and expenses charged. NMPA/HFA, comments at 4.

We are declining to adopt a fee review procedure at this time because we believe that the rules already contain adequate safeguards. Section 251.38 governs billing and provides that "[a]rbitrators are bound by the hourly or daily fee they proposed to the Librarian of Congress when their names were submitted to be listed under § 251.3, and shall not bill in excess of their proposed charges." 59 FR 23986 (1994). Subsection (b) further provides that "[a]rbitrators shall not charge the parties any expenses in addition to their hourly or daily charge." The safeguards in these rules are reinforced by the agreement the arbitrators must sign stating they will abide by the terms of these Final Regulations including "the billing restrictions specified in this subpart." § 251.38(e). The regulations already contain substantial provisions to assure that arbitrators not charge excessive rates or expenses.

Although our regulations do not specifically address the number of hours for which an arbitrator can charge, we expect that the arbitrators will be fair and charge for the actual amount of time they devoted to the proceedings. In some cases, the amount spent may be more or less for one arbitrator than it is for another. Should an arbitrator charge for an unreasonable number of hours that could not possibly bear any relationship to the amount of work performed, we believe that such action would amount to an ethical violation subject to the remedies of § 251.39. We do not, however, intend to judge or measure the amount of time it should take an arbitrator to perform a specific task, and we therefore decline to create a billing review procedure.

VII. Final Regulations

The following is a section-by-section summary of the amended regulations, together with a discussion of the applicable comments on the corresponding provisions of the Interim Regulations.

(a) Part 251—Copyright Arbitration Royalty Panels Rules of Procedure

Part 251 contains most of the rules and procedures governing the operation

of the CARPs and, like the rules proposed in the NPRM, received the greatest number of observations and suggestions from the commentators. It is divided into seven subparts, identified as subparts A through F. Subpart A, entitled "Organization," describes the composition and selection process for the CARPs. Subparts B and C, "Public Access to Copyright Arbitration Royalty Panel Meetings" and "Public Access to and Inspection of Records," remain virtually the same as those adopted in the Interim Regulations, with only a few minor amendments. Subpart D, "Standards of Conduct," prescribes the financial and ethical requirements for arbitrators, and governs *ex parte* communications, billing, sanctions for misconduct, and other matters involving ethical standards. Subpart E, "Procedures of Copyright Arbitration Royalty Panels," prescribes the procedures to be followed by the CARPs in conducting proceedings, including those governing submission of evidence, conduct of hearings, reports of the CARPs, and orders of the Librarian. Subparts F and G," Rate Adjustment Proceedings" and "Royalty Fee Distribution Proceedings," provide certain additional requirements inherent in rate adjustment and distribution proceedings.

We have already described most of the major issues raised by the commentators to the Interim Regulations and discussed our responses and amendments. The following summarizes other additions and changes to the Interim Regulations in the various subparts of part 251.

(1) Subpart A—Organization

Arbitrator lists. Section 251.3 describes the information that must be submitted to the Librarian by an arbitration association for each person to be eligible to serve on a Copyright Arbitration Royalty Panel. Section 251.3(a)(5) requires "a description or schedule detailing fees proposed to be charged by the person for service on a CARP." James Cannings submits that the proposed fees "should reflect the current market daily or hourly rate as are charged by arbitrators who serve National Arbitration Associations, such as, the Arbitration Association of America." Cannings, comments at 2.

For reasons stated above in the discussion of our rejection of a fee schedule, it is not appropriate for the Librarian or the Copyright Office to impose fee restrictions on persons seeking to be arbitrators. Although the fee information provided by a potential arbitrator will have a bearing on his or her selection, we decline to amend § 251.3(a)(5) to adopt fee limitations.

Qualifications of the arbitrators. As was the case with the comments filed in response to the NPRM in this rulemaking proceeding, Copyright Owners had disparate opinions regarding the requirement in § 251.5 that all CARP arbitrators be admitted to the practice of law. Program Suppliers filed a separate comment in response to the Interim Regulations devoted solely to arguing that the Librarian should also consider non-lawyers in the selection process, while other copyright owners identified as Certain Copyright Owners filed a separate comment urging that the Copyright Office retain the requirement.

Program Suppliers advance essentially the same argument, which they made in response to the NPRM, that allowing non-lawyers as arbitrators could prove invaluable in expediting the arbitration process:

> In reaching its ruling, the Office ignored the important value that non-lawyers with expertise in the types of statistical and economic studies that comprise the heart and body of distribution and rate adjustment evidence could bring to the decisionmaking process. Having arbitrators who are familiar with statistical and economic studies similar to those presented in prior rate adjustment and distribution proceedings would give each panel added competence to deal with the substantive issues raised, and thus assist the decisionmaking.
>
> It is ironic, to say the least, that the Office's ruling was based on a concern about the lack of time for non-lawyers to learn the nuances of legal rulings, but ignored the possibility that lawyer-arbitrators might have absolutely no familiarity with the type of complex studies presented by expert witnesses over and over again in prior distribution and rate adjustment hearings. Although legal rulings can affect certain aspects of a hearing, interpretation and understanding of the conflicting substantive evidence is crucial to reasoned final determinations setting rates or distribution royalties.

Program Suppliers, comments at 2–3. Program Suppliers believe that retaining subsection (c) of § 251.5 requiring arbitrators to have "[e]xperience in conducting arbitration proceedings or facilitating the resolution and settlement of disputes" would satisfactorily provide the potential arbitrator with the type of experience necessary to conduct arbitration proceedings. *Id.* at 2.

Certain Copyright Owners argue that Program Suppliers' arguments have already been rejected in the Interim Regulations, and that Program Suppliers fail to make any showing that "the list already developed will fail to yield at least three Panel members who are capable of resolving royalty disputes in a fair and efficient manner." Certain Copyright Owners, reply comments at 2. Certain Copyright Owners believe that economic expertise is not necessary, and might cause an undue bias among the panel members. *Id.*

The Copyright Office has reconsidered the lawyer requirement imposed by § 251.5 and reaffirms its decision to retain the requirement. It appears that Program Suppliers are not so much concerned with allowing non-lawyers to serve on CARP panels as they are with seeing economists among the listed arbitrators. Section 251.5 in no way prevents economists or those with economic training from serving on a CARP, provided that they are admitted to the practice of law. Furthermore, we agree with Certain Copyright Owners' observation that Program Suppliers have failed to demonstrate any deficiency in the quality of experience of the potential arbitrators appearing on the current list. *See* 59 FR 24486 (1994). The listed arbitrators have diverse backgrounds and training, including economic expertise. Moreover, all of the listed persons have experience in the practice of law which, given the shortness of the arbitration period, is important in the efficiency and speedy disposition of CARP proceedings. The Copyright Office, therefore, declines to make any changes to § 251.5.

(2) Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

CARP Meetings. Copyright Owners make several suggestions with respect to meetings of the CARPs. Because confidential proprietary information is sometimes introduced into the record, it is necessary for the CARP to close a meeting for the purposes of receiving that information. When confidential material is involved in only a limited portion of the meeting, it is not necessary to close the entire meeting. The Interim Regulations, however, provide only for the closing of an entire meeting. Copyright Owners therefore suggest that §§ 251.11(b) and 251.13 be amended to make clear that a CARP may close only that part of a meeting during which confidential information is discussed; all other portions of the meeting, however, would be open. Copyright Owners, comments at 26.

Copyright Owners also note that because it is often impossible to determine when and if confidential information may be disclosed at a meeting, it may be impossible to give the seven-day advance notice in the Federal Register required by § 251.11(b). Copyright Owners therefore suggest that a general notice of the possibility of the introduction of confidential information during the

course of a hearing should suffice to meet the notice requirements even though it would be impossible to provide a specific date and time of the closed portion of the meeting. *Id.*

Another issue raised by Copyright Owners is the treatment of a CARP's internal deliberations. According to Copyright Owners, a literal reading of Subpart B would apply to confidential deliberations among CARP arbitrators. "Thus, for example, if the members of a CARP want to talk over an objection to testimony during the course of a hearing before ruling on it, they would be obliged to have that discussion transcribed and to announce the fact of that confidential 'meeting' in the Federal Register." *Id.* at 26–27. Copyright Owners therefore propose that the procedures of §§ 251.14 and 251.15 be modified so that (a) transcripts or minutes are not necessary for internal CARP deliberations, and (b) the procedures for closed meetings in § 251.14 do not apply to such deliberations. *Id.* at 27.

The points made by Copyright Owners are well taken. In order to allow CARPs to close only a portion of a meeting, as opposed to an entire meeting, for the taking of confidential information and related material, we are amending §§ 251.11(b) and 251.13 by adding the phrase "any portion of a meeting." With respect to seven-day advance publication notice in the Federal Register of a meeting that may be closed in part or in whole, we agree that a general notice of the possibility of the introduction of confidential information should suffice to satisfy the notice requirements. The notice of publication in the Federal Register therefore shall, as a matter of policy, contain such a general statement.

Finally, with respect to the procedures required for closed meetings applying to CARP deliberations, we agree with Copyright Owners that application of those procedures is neither desirable nor appropriate. We are therefore amending § 251.14 by adding a new subsection (d) which provides that "[t]he procedure for closed meetings in this section and § 251.15 shall not apply to the internal deliberations of arbitrators carried out in furtherance of their duties and obligations under this chapter."

(3) Subpart C—Public Access to and Inspection of Records

No comments were received regarding subpart C. However, section 251.22(c) has been amended to delete the § .40 per page charge for photocopies of CARP or Copyright Office records. Because such charges change from time to time, the section now reads that photocopies are available at the "applicable Office charge."

(4) Subpart D—Standards of Conduct

Financial conflict of interests. When we originally proposed financial conflict of interest rules, our main concern was with their proper scope. Did we propose rules that did not cover enough situations, and therefore miss some very real conflicts of interest, or, on the other hand, did our proposed rules go too far, and eliminate qualified persons for inconsequential reasons? In an effort to reach the proper scope, we not only proposed rules, but we also asked for comments on certain hypothetical situations that went beyond the scope of our proposed rules.

The Copyright Owners' response reflects the difficulty of drawing the proper line. While they offered opinions about the hypothetical situations that indicated a belief that our proposed rules did not go far enough, ultimately they did not ask to expand the rules, but proposed handling the gray area questions on a case-by-case basis, using the disclosure procedure to the parties described in section 251.32(b)(2) as a method to decide whether the conflict is disqualifying. The Copyright Owners stated:

> Copyright Owners believe that decisions about the financial conflicts of potential arbitrators must be made on a case-by-case basis, with no single application of the rules being dispositive on a specific case. . . . The screening of arbitrators for any panel ought not to occur through rote application of the rules * * * If the Librarian finds a question arising as to whether a conflict exists as to a particular arbitrator, further information should be made available to the parties so that they may determine whether the person should be disqualified or whether the potential conflict might be waived.

Copyright Owners, comments at 21.

We agree with the Copyright Owners that this is the proper approach. Therefore, we have not modified the scope of the financial conflict of interest rules, but we have made a change in the disclosure rule, section 251.32(b)(2). Whenever a potential arbitrator has a conflict of interest as defined by our rules and has indicated that he or she wants this conflict to be disclosed to the parties, or whenever a potential arbitrator has an interest beyond the specified scope of the rules which raises our concern, section 251.32(b)(2) provides we will list these interests anonymously in an order issued to the parties to each upcoming proceeding at the time the Librarian establishes for precontroversy motions, and we will request that the parties indicate within 30 days which conflicts or potential conflicts they believe are disqualifying. For those interests within the scope of our conflict of interest rules, the indications of the parties will be dispositive. For those potential conflicts outside of the scope of our conflict of interest rules, the indications of the parties will aid the Librarian in his decision.[11]

There was, however, one area in which the Copyright Owners commented that the scope of the conflict of interest rules was too broad. Section 251.31(d)(3) imputes the financial interest of the arbitrator's general partner to the arbitrator. The Copyright Owners believe that section 251.31(d)(3) means that each potential arbitrator would have to inquire of each of his/her general partners about their personal investments. The Copyright Owners consider this an unworkable burden and doubt that any potential arbitrator would be influenced by the personal holdings of a general partner, especially if that general partner's financial interest is unknown to the arbitrator. The Copyright Owners ask that an exception to the rule on imputation of interests be made in the case of a general partner's personal financial holdings. Copyright Owners, comments at 24–25. We agree, and section 251.31(d)(3) has been modified to reflect this exception.

Ex parte communications. In our proposed interim rules, distinctions were made among four classes of persons concerning ex parte communications: (1) the Librarian of Congress and the Register of Copyrights, (2) the selected arbitrators, (3) the listed arbitrators, and (4) the Library and Copyright Office personnel. In particular, we drew a distinction between selected arbitrators who are subject to a total ban on contact between them and interested parties in their controversy, and listed arbitrators who are not subject to a total ban on contact, but who may not communicate with any interested party about the merits of any past, pending, or future proceeding relating to CARP.

Both the Copyright Owners and James Cannings state that they believe no

[11] For example, arbitrator X has a spouse who is employed by one of the parties to the proceeding. Because that is a interest within the scope of our rules, the response of the parties will be dispositive. That is, if any one of the parties objects, arbitrator X may not serve. On the other hand, if arbitrator X has a parent who is employed by one of the parties, that would be an interest outside of the scope of our rules. In that case, if one or more of the parties objects, that objection will be taken into account when the Librarian makes his decision, but the objection will not automatically disqualify arbitrator X.

distinction should be made between selected and listed arbitrators, and that there should be a total ban on contact with all arbitrators. The Copyright Owners argue for the highest standard concerning selected and listed arbitrators because of "the substantial financial interests at stake." The Copyright Owners, however, would mitigate the severity of a total ban to permit nonsubstantive pleasantries between arbitrators and parties. Finally, the Copyright Owners note that the restrictions concerning arbitrators are against contact with any interested "party" and would prefer that it be changed to "person" because of what they believe to be the ambiguous meaning of the word "party." Copyright Owners, comments at 15–18.

Having reviewed the comments of the Copyright Owners and James Cannings, we continue to believe that the distinction between selected and listed arbitrators is valid. In any given year, 75 persons will be listed to be available to serve as arbitrators. A total ban on contact with all 75 persons would be unworkable, and unfair to the persons offering their services. For the remote chance of being selected, they would be giving up a degree of personal freedom, not for any actual impropriety but for the avoidance of the appearance of impropriety. However, we believe it is fair and highly necessary that listed arbitrators understand that they may not engage in any actual impropriety, that is, discuss the merits of any royalty proceeding, past, present or future. This is a much narrower and more appropriately tailored limitation on their activities. Once selected, the total ban on contact with the three selected arbitrators is essential. It assures fairness to all parties by guaranteeing that no opportunity for influence can possibly occur. Procedural requests of the selected arbitrators should be routed through Library or Copyright Office personnel who are assigned to support the arbitrators.

We do agree, however, with the Copyright Owners' request that innocent pleasantries should not be subject to the total ban, and that the word "party" should be changed to "person" to avoid any ambiguity. The changes to section 251.33 have been made accordingly.

Gifts and other things of monetary value. In our interim rules, we make a distinction between selected arbitrators who are subject to a total ban on soliciting or accepting gifts or any other thing of monetary value from an interested person, and listed arbitrators who may solicit or accept gifts of less than $20 per occasion, and not more than $50 per year from any one source. We also provide that a listed arbitrator may accept a gift beyond the $20–$50 limit where it is clear that the gift is motivated by a family relationship or a personal friendship rather than the potential of the listed arbitrator to be selected.

The Copyright Owners and James Cannings believe that no distinction should be made between selected and listed arbitrators and that they should all abide by a total ban on the soliciting or acceptance of any gift. The Copyright Owners state that applying the total ban to listed arbitrators would "reduce the perceived opportunities for influencing of either listed or selected arbitrators." Copyright Owners, comments at 18.

Again, as stated above, we believe that the restrictions on the activities of listed arbitrators should be limited to actual improprieties only, considering that they may never be selected. Requiring listed arbitrators to refuse gifts no matter how small, and to avoid normal relations with existing friends and family simply to avoid the appearance of impropriety is too great a restriction, and may result in various individuals refusing to participate. The exceptions for nominally valued gifts and for gifts from existing friends and family were derived from the regulations issued by the Office of Government Ethics, and represent their line-drawing for thousands of compensated government employees who are in a position to confer a benefit on a private party (versus listed arbitrators who are neither compensated nor in a position to confer a benefit). We do not believe that a lunch valued at less than $20 where no discussion of the merits of any past, present or future proceeding takes place would result in the influencing of any listed arbitrator. Consequently, the distinction between selected and listed arbitrators is retained in the final rules.

Post-arbitration employment restrictions. While we did not receive any comments on our rule against arbitrators being employed for three years by any party, person or entity with a financial interest in the proceeding, we did receive a comment on the hypothetical we posed based on this section. The hypothetical asked whether an arbitrator who has ruled on a cable rate adjustment may take a cable system as a client afterwards if that cable system, although affected by the outcome, had neither participated in the proceeding nor authorized anyone else to represent it. The Copyright Owners stated that they believed the arbitrator could take the cable system as a client, but gave no reasons, and prefaced their answers to all the hypotheticals by saying they were difficult to answer given the limited facts available. Copyright Owners, comments at 22, 24.

We believe that since we received only one limited comment on this hypothetical, we do not have sufficient comments to render a conclusion. We reserve judgment until an actual case presents itself. In the meantime, the rule is adopted as proposed.

Remedies. Currently, section 251.39 provides sanctions against selected arbitrators, listed arbitrators, and outside parties who violate the standards of conduct. The Copyright Owners argue that sanctions should also be put in place for Library and Copyright Office personnel who violate the standards. Copyright Owners, comments at 24.

Library of Congress Regulations (LCRs) already set forth sanctions for Library and Copyright Office personnel who violate internal personnel rules. LCR 2023–1 instructs all staff members to avoid actions which might result in or create the appearance of using public office for private gain, giving inequitable and improper preferential treatment to any person to the prejudice or detriment of others, or compromising the independence or impartiality of the Library.

We believe this applies to the rules on ex parte communications, and would cover any disclosure of nonpublic information, even though section 251.37 only applies to arbitrators. In addition, however, the Library's General Counsel, who serves as the agency's ethics officer, has issued a memorandum that will be circulated to all personnel likely to have any interaction with a CARP detailing the new situations that could arise and how employees should respond to them.

(5) Subpart E—Procedures of Copyright Arbitration Royalty Panels

a. *Formal Hearings.* (i) Phase I/Phase II. In the preamble text to the Interim Regulations, we asked several questions with regard to the procedural division of royalty distribution proceedings. The Copyright Royalty Tribunal traditionally divided distribution proceedings into two phases: Phase I determined the percentage allocation among the categories of claimants, while Phase II resolved disputes within a claimant category. The Tribunal practice, however, was just that, and was never embodied in the rules. We sought comment on the following:

Is the procedure of dividing a cable distribution proceeding into Phases I and II a precedent that is binding on the Copyright Office?

If not, should it nonetheless be followed?

If it should be followed, should we adopt rules governing the procedure?

Should those rules include a definition of each of the Phase I categories?

59 FR at 23976–23976 (1994).

Copyright Owners urge that, regardless of the binding effect of the former Tribunal's practice on the Office, the division of proceedings into Phase I and Phase II should continue in order to prevent chaos in the distribution process. Copyright Owners, comments at 13. They note that Phase I claimant categories offer two primary benefits to the distribution process. First, by allowing each claimant category to collect the total royalty awarded to it and distribute that total to its individual claimants, the "process frees the Copyright Office from the expense of mailing hundreds of distribution checks to individual claimants each time a distribution is made." *Id.* at 14. Second, the grouping together of claimants into categories reduces Phase I litigation to less than ten parties, rather than hundreds of individual claimants. *Id.* "In short, the established Phase I/Phase II divisions provide very strong procedural and organizational efficiencies that have worked well in the past and should be continued in the future." *Id.*

Copyright Owners urge the Office to adopt procedures governing Phase I/Phase II proceedings that would allow for separate hearings of Phase I and Phase II proceedings, but offer no comment or suggestion as to what those rules should be. *Id.* at 14–15. They also believe that definitions of Phase I categories should be available to arbitrators, but not included in these rules because "it could create unnecessary rigidity that would fail to accommodate changing conditions." *Id.* at 15. Copyright Owners therefore suggest that parties provide a stipulated set of program definitions to arbitrators at the start of each distribution proceeding. *Id.*

The Copyright Office believes that the division of distribution proceedings into Phase I and Phase II categories provides an efficient manner for conducting such proceedings, and therefore will retain the use of the categories. In dividing distribution proceedings into Phase I and Phase II categories, we will look to Tribunal precedent for guidance, as well as the exigencies of each individual case. For these reasons, we do not believe that it is necessary to adopt separate procedures for Phase I and Phase II proceedings, as is suggested by Copyright Owners. The Copyright Royalty Tribunal functioned for fifteen years without separate rules for each type of proceeding, and exercised its discretion to divide each distribution into Phase I and Phase II categories on a case-by-case basis. The procedural rules of the subchapter applicable to distribution proceedings apply with equal basis to each controversy, regardless of whether it is Phase I or Phase II, and therefore do not require separate sets of rules. Furthermore, it is the Librarian who shall determine the number and category of controversies in each distribution proceeding, and submit each controversy or controversies to one or more CARPs as is appropriate. Copyright Owners are therefore correct in their assertion, *see* comments at 14–15, that the nature and extent of controversies in one royalty distribution proceeding may require the convocation of more than one CARP for resolution. Thus, for example, a CARP may be convened to resolve controversies in Phase I, and another may be required at a later date to resolve controversies in Phase II. The only way to make such determinations is on a case-by-case basis, as was done by the former Tribunal, and the Office therefore heeds the advice of Copyright Owners by declining to adopt rules governing the identification and classification of Phase I/Phase II procedures which could "create unnecessary rigidity that would fail to accommodate changing conditions." Copyright Owners, comments at 15.

The Copyright Office also accepts Copyright Owners' suggestion of allowing parties to a proceeding to stipulate the definitions of Phase I categories and programs to the arbitrators in that proceeding. In order to allow arbitrators a sufficient amount of time to become familiar with the definitions, the Librarian will, in the notice establishing the 45-day precontroversy discovery period, instruct the parties to the proceeding to stipulate a complete set of definitions by the end of the precontroversy discovery period. If the parties are unable to reach agreement by that date, the Copyright Office will, in accordance with our authority to provide support to the CARPs under 17 U.S.C. 801(d), provide the arbitrators with the necessary definitions of Phase I categories and programs to allow them to accomplish their task.

(ii) Paper proceedings. Section 251.41(b) permits the parties to a proceeding to petition the Librarian to have their controversy decided solely on the submission of written pleadings. The petition may be granted if "(1) there is no genuine issue as to any material fact, or (2) all parties to the controversy agree with the petition." 59 FR 23976 (1994).

Copyright Owners believe that § 251.41(b)(2) is in need of clarification. They note:

> As currently drafted, Section 251.41(b)(2) allows rulings only in uncontested cases where "all parties to the controversy agree with the petition." Of course, if all parties agree with the petition, then there would be no need for a ruling.
>
> Copyright Owners believe that Section 251.41(b)(2) was intended to allow ruling where all parties agree *with the request* that the issue be decided by petition, regardless of whether they agree with the merits of the petition.

Copyright Owners, comments at 31.

Copyright Owners' point is well taken. The intention of the rule is to allow the parties to a proceeding to petition the Librarian and dispense with formal proceedings. The CARP panel would then decide the controversy or rate adjustment on the basis of written pleadings only, i.e., a "paper" proceeding. In deciding whether to allow a paper proceeding before a CARP, the petition must demonstrate that (1) there is no genuine issue of material fact involved in the proceeding (not the petition), or else 2) the parties unanimously agree that they wish to have a paper proceeding. If either one of these factors is properly represented in the petition, the Librarian may (not must) grant the petition, or can designate the issue of whether a paper proceeding would be proper to the CARP. Section 251.41(b)(2) is only intended to allow the Librarian to decide if a paper proceeding before a CARP would be appropriate; it is not designed to allow the Librarian to decide the merits of a paper proceeding or the case. To clarify the intention of the rule, we are amending it.

b. Conduct of hearings: Role of arbitrators. Section 251.46(b) provides that "Only the arbitrators of a CARP, or counsel as provided in this chapter, shall question witnesses." James Cannings argues that the rule, as drafted, precludes parties from appearing *pro se* before the CARPs, since only the CARPs and "counsel" can question witnesses. Cannings, comments at 2.

Section 251.46(b) does not prohibit *pro se* representation in a CARP proceeding. A *pro se* litigant acts as his own counsel, and is entitled to question witnesses in the same manner as parties represented by counsel. No amendment to § 251.46(b) is necessary.

c. *Witnesses and Counsel.* Copyright Owners suggest that there may be some confusion with the drafting of § 251.47. Subsection (l) provides:

> A CARP will encourage individuals or groups with the same or similar interests in

a proceeding to select a single representative to conduct their examination and cross-examination for them. However, if there is no agreement on the selection of a representative, each individual or group will be allowed to conduct its own examination and cross examination, but only on issues affecting its particular interests, provided that the questioning is not repetitious or cumulative of the questioning of other parties within the group.

59 FR 23989 (1994).

Copyright Owners believe that, as currently drafted, the subsection "seems to require that all parties with a similar interest accede to a single counsel for examination or cross-examination of all witnesses. It is unlikely that parties would agree to such a broad transfer." Copyright Owners, comments at 32. Copyright Owners therefore suggest that the phrase "of any given witness" be added each time after the word "cross-examination" to clarify that agreements between parties of similar interest to utilize one representative for questioning applies only to individual witnesses, and not across the board for an entire proceeding. *Id.*

We do not perceive the confusion expressed by Copyright Owners and believe that subsection (l), as drafted, permits parties with similar interest to agree to one representative for examining and cross-examining either one witness or as many as the agreement allows. Nevertheless, in the interest of clarity, we are adopting Copyright Owners' suggested amendment.

d. *Transcript and Record.* In our discussion of § 251.49 in the Interim Regulations, we solicited comments on whether the hearing sessions should be recorded on video as well as audio tape. We noted that videotaping would add to the cost of the proceeding, but it would also:

"(1) Ensur[e] the accuracy of the official transcript, (2) allow[] the arbitrators to reach a better decision by helping them to review the case more accurately, and (3) afford[] arbitrators who missed any portion of the proceeding, because of illness or because they were appointed after the proceeding had begun, an opportunity to make up for their absences.

59 FR at 23977 (1994).

Copyright Owners are opposed to the videotaping of proceedings, arguing that they "do not believe that any advantage derived from videotaping would be worth the considerable expense and difficulty associated with video recording." Copyright Owners, comments at 29. They also note that videotaping "could, in fact, have the unintended and perverse effect of increasing the number of hearing days missed by an arbitrator who considers seeing a taped performance as equivalent to being present during the live presentation." *Id.*

For these reasons, we will not videotape distribution or rate adjustment proceedings, unless the parties to a particular proceeding unanimously ask us to do so.

(6) Rate Adjustment Proceedings

Settlements.

(i) *Settlement period.* Section 251.63 provides a 30-day period before commencement of a rate adjustment proceeding to allow for consideration of the rate adjustment petition and, more significantly, to give the parties an opportunity to settle their differences. We are amending this section to make it clear that the Librarian shall designate this 30-day period prior to, and separate from, the 45-day period for precontroversy discovery. We are also amending § 251.64 to reflect that the arbitration proceedings will commence after both the 30-day period for settling rate differences, and the 45-day period for precontroversy discovery.

(ii) *Universal Settlements.* In the Interim Regulations, we asked two questions related to settlement of rate adjustments:

If a settlement is reached, would it be a useful alternative to the convening of a CARP for the Library/Office to propose the agreed-upon rate to the public in a notice-and-comment proceeding?

Does the Librarian have the authority to adopt such a procedure, or would the convening of a CARP be required?

59 FR 23978 (1994).

RIAA [12] and Copyright Owners believe that in the case of a universal settlement a CARP would have no authority over a proceeding. The Office would therefore be responsible for amending the rules, after a public notice-and-comment period, to reflect the agreed upon rate. RIAA/AARC, comments at 8; Copyright Owners, reply comments at 6. RIAA argues that the CARPs' authority is limited to controversies over royalty rates; if there is no controversy because there has been a settlement, then there is no CARP authority. RIAA/AARC, comments at 8–9 [(citing our NPRM, 59 FR 2553 (1994)]. Copyright Owners note that convening a CARP after settlement has been reached "would make no sense" and "would subject the owner/user participants to needless expense." Copyright Owners, reply comments at 6–7. A public notice-and-comment period "should provide the Librarian with an adequate record on which to determine whether to amend the regulations consistent with the terms of the settlement." *Id.* at 8.

NMPA/HFA believes that the rules should provide the parties to a rate adjustment proceeding with the option of either having a CARP convened, or submitting the agreed upon rate to a public notice-and-comment proceeding. NMPA/HFA, comments at 2. NMPA/HFA believes that the statutory authority to provide such procedures "can be fairly implied from the Reform Act's direction that the Librarian adopt procedures and regulations relating to CARP proceedings and the Reform Act's express grant of authority to the Librarian to make the final determination in rate adjustment proceedings." *Id.* at 3.

We agree with Copyright Owners that it would make little sense to go through the time and expense of convening a CARP solely for the purpose of approving a settlement agreement. Without deciding the issue of whether a CARP would have jurisdiction in such cases, we are amending § 251.63 by adding a new subsection:

(b) In the case where a settlement is reached as to the appropriate royalty rate, the Librarian may, upon the request of the settling parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.

(7) Part 252—Filing of Claims to Cable Royalties

Compliance with statutory dates. Section 252.4 describes the circumstances under which a claim to cable copyright royalties must be filed in order to be considered timely.

(i) *Delivery of claims.* We are amending § 252.4(a) to adjust for some of the difficulties faced by the Copyright Office in receiving cable royalty claims on a timely basis. Unlike the CRT, the Copyright Office and the Library of Congress are large institutions receiving a tremendous amount of mail each day, only a small percentage of which involves CARP matters. For the July 1994 filing period, we experienced difficulties with cable and satellite claims arriving at different locations of the Library by many different means of delivery (U.S. mail, messenger service, private mail carrier delivery). In order to assure that claims arrive during the statutorily prescribed time period, we are amending § 252.4(a) to specify the two methods by which claims may be delivered to the Copyright Office. The

[12] AARC took no position on this particular issue involving rate adjustment proceedings.

first method is by mailing the claim to the official CARP address with the U.S. Postal Service, proper postage attached, so that when the claim arrives at the Copyright Office, it bears a July U.S. postmark. The second method is hand delivery to the Office of the Register of Copyrights, located in Room 403 of the James Madison Building, 101 Independence Avenue SE., Washington, DC 20540, during normal business hours in the month of July. Such hand delivery may be done by the claimant itself, or by the claimant's agent, or by a private delivery carrier (ex. Federal Express, DHL, messenger service) or other such manner. Hand delivery of claims to the mail receiving area of the Library of Congress, or to other locations in either the Library or the Copyright Office, is not compliance with the regulation. Claims which are hand delivered to other locations in the Library or Copyright Office will be dismissed if the Office cannot conclusively determine that the claim was physically located on Library and/or Copyright Office premises during the month of July.

(ii) *U.S. postmark.* Canadian claimants challenge the requirement in § 252.4(a)(2) that mailed claims must bear a July U.S. postmark. We took this provision directly from the Copyright Royalty Tribunal's rules. *See* 59 FR 23979 (1994). Canadian Claimants acknowledge that they did not object to the Tribunal's initial adoption of U.S. postmark requirement, but state that they have experienced "difficulties" with the requirement since its adoption, although they do not precisely state what those "difficulties" are.[13] Canadian Claimants, comments at 2. They therefore urge the Office to accept both Canadian and U.S. postmarks. *Id.*

We discussed in the Interim Regulations the Copyright Owners' request that we allow July mailings from Canadian and Mexican post offices. *See* 59 FR 23979 (1994). We declined the request, but stated that "we invite them [Copyright Owners], and any other interested parties, to provide further information and comments on the question." *Id.* Our request for further information emanates from our concern with compliance with the statute. The statutory requirement for filing cable claims is clearly spelled out in 17 U.S.C. 111(d)(4)(A): "During the month of July in each year, every person claiming to be entitled to compulsory license fees for secondary transmissions shall file a claim with the Librarian of Congress * * *" The statute requires that the claim be with the Librarian during the month of July, arguably meaning in his possession. However, we accept the submission of a claim to the U.S. Postal Service, as statutorily sufficient, providing it bears a July U.S. postmark. The postmark is an acknowledgment that the claim was validly tendered with the U.S. Government in the month of July.

Our concern with allowing Canadian and Mexican postmarks is that those marks would not necessarily prove compliance with the statute. Neither the Canadian nor the Mexican postal service is part of the U.S. Government. Furthermore, if we were to allow Canadian and Mexican postmarks, we would have to allow national postmarks from all countries, since there are some copyright owners of cable retransmitted programming that do not reside in the United States, Canada or Mexico.

Copyright Owners and Canadian Claimants' desire for allowing Canadian and Mexican postmarks appears to be motivated by the desire ostensibly to add a few more days to the claim period. We, however, agree with what the Tribunal said in 1989 when it adopted the July U.S. postmark requirement:

> The Tribunal does not believe that our insistence that either a claim be received in our office during July or that it bear a July U.S. postmark is too restrictive. The claim itself is easy to prepare. No government forms are necessary. The information that is required can be put on one page. Further, the claimant has six months from the close of the calendar year to prepare it, and the entire month of July to submit it to the Tribunal. Our proposed rule provides a bright line test which should end all questions of fact regarding the timeliness of the claim.

54 FR 12614, 12615 (1989). For these reasons, we are not adopting the Canadian Claimants' suggestion.

(iii) *Proving mailed claims.* Section 252.4(e) provides in the pertinent part that:

> In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonethe less prove that the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt.

59 FR 23993 (1994).

Copyright Owners believe that this provision, as drafted, could cause some confusion. Copyright Owners, reply comments at 8. They note that there are two receipts associated with certified mail—the one given the sender by the Post Office and the one signed by the receptionist and returned to the sender—and that subsection (e) does not identify which receipt is acceptable proof. Copyright Owners, however, state that our discussion of the provision in the Interim Regulations makes it clear that either receipt would be acceptable. *See* 59 FR 23980 (1994). ("If the claim was sent by certified mail, return receipt requested, we will accept the claim if the claimant can produce the receipt showing that it was properly mailed.") In order to clear up any possible ambiguity in the regulation, the Copyright Owners propose that we amend subsection (e) to read:

> In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt showing that it was properly mailed or timely received.

Copyright Owners, reply comments at 9. We are adopting the Copyright Owners' suggestion.

(8) Part 257—Filing of Claims to Satellite Carrier Royalty Fees

Part 257 remains unchanged, except that we amend § 257.4(a) regarding timely filing of claims, discussed above, and accept Copyright Owners proposed amendment regarding the proving of mailed satellite carrier royalty claims through the use of certified mail return receipt requested. § 257.4 (e). We are also retaining the requirement of a U.S. postmark for satellite carrier claims, § 257.4(a)(2), for the same reasons we are retaining the requirement for cable claims.

(9) Part 259—Filing of Claims to Digital Audio Recording Devices and Media Royalty Payments

Consistent with our decision concerning joint claims for cable and satellite carriers, § 259.3 is amended to require that joint claimants to the DART fund include a list of all their joint claimants when the claim is filed, except, as discussed above, the performing rights societies will receive no exemption from this requirement. Performing rights societies will have to list the members and affiliates they have signed to represent in DART as part of their filing a claim. As a result, the current § 259.3(d), which allows joint claimants to lump their claims together after the claim period, and the current § 259.3(f) which provides that the Office may require the productions of the list after the claim period ends, are deleted.

[13] Canadian Claimants state earlier in their comment that their membership changes from year to year and that produces "the constant presence of new claimants who are unaware of the filing requirements and appear on the scene at (or shortly after) the last moment * * *" *Id.* Presumably it is the last minute identification of Canadian copyright owners eligible for cable royalties that produces the "difficulties."

As a practical matter, joint claimants who decide after the claim period to join together will simply report to the Office that they have settled, and no need to consolidate their claim exists.

In addition, we amend § 259.5(a) regarding timely delivery of claims and accept the Copyright Owners' proposed amendment of § 259.5(e) regarding the proving of mailed DART claims through the use of certified mail return receipt requested.

List of Subjects

37 CFR Part 251

Administrative practice and procedure, Hearing and appeal procedures.

37 CFR Part 252

Cable television, Claims, Copyright.

37 CFR Part 253

Copyright, Music, Radio, Rates, Television.

37 CFR Part 257

Cable television, Claims.

37 CFR Part 259

Claims, Copyright, Digital audio recording devices and media.

Final Regulations

For the reasons set out in the preamble, 37 CFR chapter II is amended as follows:

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

1. The authority citation for part 251 continues to read as follows:

Authority: 17 U.S.C. 801–803.

Subpart A—Organization

2. In section 251.2, paragraph (f) is added to read as follows:

§ 251.2 Purpose of Copyright Arbitration Royalty Panels.

* * * * *

(f) To adjust royalty rates for the satellite carrier compulsory license in accordance with 17 U.S.C. 119(c).

§ 251.3 [Amended]

3. Section 251.3(a) is amended by removing ", on or before May 6, 1994, and before January 1 of each year thereafter," and adding "before January 1 of each year".

3a. Section 251.3(b) is amended by removing "After May 6, 1994, and after January 1, of each year thereafter," and adding "After January 1 of each year,".

§ 251.4 [Amended]

4. Section 251.4(a) is amended by removing "30-day period specified in § 251.63" and adding "45-day period specified in § 251.45(b)(2)(i)".

4a. Section 251.4(b) is amended by removing "30-day time period specified in § 251.45(a)" and adding "45-day period specified in § 251.45(b)(1)(i)".

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

5. In § 251.11, paragraph (b) is amended by revising the second sentence to read as follows:

§ 251.11 Open meetings.

* * * * *

(b) * * * Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and, if so, which ones, and the name and telephone number of the person to contact for further information.

* * * * *

6. In § 251.13, the introductory text is revised to read as follows:

§ 251.13 Closed Meetings.

In the following circumstances, a Copyright Arbitration Royalty Panel may close meetings, or any portion of a meeting, or withhold information from the public:

* * * * *

7. In § 251.14, paragraph (d) is added to read as follows:

§ 251.14 Procedure for closed meetings.

* * * * *

(d) The procedure for closed meetings in this section and in § 251.15 shall not apply to the internal deliberations of arbitrators carried out in furtherance of their duties and obligations under this chapter.

Subpart C—Public Access to and Inspection of Records

§ 251.22 [Amended]

8. Section 251.22(c) is amended by removing "$0.40 per page" and adding "the applicable Office charge".

Subpart D—Standards of Conduct

9. Section 251.31 is amended by revising paragraph (d) to read as follows:

§ 251.31 Financial interests.

* * * * *

(d) For the purposes of this section, the financial interests of the following persons will serve to disqualify the selected arbitrator to the same extent as if they were the arbitrator's own interests:

(1) The arbitrator's spouse;

(2) The arbitrator's minor child;

(3) The arbitrator's general partner, except that the personal financial holdings, including stock and bond investments, of such partner will not serve to disqualify the selected arbitrator; or

(4) An organization or entity for which the arbitrator serves as officer, director, trustee, general partner or employee.

10. Section 251.32 is amended by revising paragraph (b) to read as follows:

§ 251.32 Financial disclosure statement.

* * * * *

(b) If any conflicts do exist, the Librarian shall not choose that person for the proceeding for which he or she has the financial conflict, except—

(1) The listed arbitrator may divest himself or herself of the interest that caused the disqualification, and become qualified to serve; or

(2) The listed arbitrator may offer to disclose on the record the conflict of interest causing disqualification. In such instances:

(i) The Librarian shall publish a list detailing the conflicts of interest the listed arbitrators have offered to disclose, and any other matters which, although outside of the scope of the restrictions of § 251.31, nevertheless, in the view of the Librarian, raise sufficient concerns to warrant disclosure to the affected parties;

(ii) Such list shall be published in the order establishing the period for precontroversy motions (*see*, § 251.45(b));

(iii) Such list shall contain the matters of concern, but shall not contain the names of the listed arbitrators.

(iv) Any party to the proceeding for which the listed arbitrator is being considered may interpose within the 45-day period described in § 251.45(b) an objection to that arbitrator being selected. If the objection is raised to a matter found to be within the scope of § 251.31, the objection will serve automatically to disqualify the arbitrator. If the objection is raised to a matter found to be outside the scope of § 251.31, the objection will be taken into account when the Librarian makes his or her selection, but will not serve automatically to disqualify the arbitrator.

* * * * *

11. Section 251.33(b) is revised to read as follows:

§ 251.33 Ex parte communications.

* * * * *

(b) *Selected arbitrators.* No interested person shall engage in, or cause someone else to engage in, *ex parte* communications with the selected arbitrators in a proceeding for any reason whatsoever from the time of their selection to the time of the submission of their report to the Librarian, and, in the case of a remand, from the time of their reconvening to the time of their submission of their report to the Librarian. Incidental communications unrelated to any proceeding, such as an exchange of pleasantries, shall not be deemed to constitute an *ex parte* communication.

* * * * *

§ 251.33 [Amended]

12. Section 251.33(c) is amended by removing "party" and adding "person".

Subpart E—Procedures of Copyright Arbitration Royalty Panels

13. In § 251.41, paragraph (b) is revised to read as follows:

§ 251.41 Formal hearings.

* * * * *

(b) During the 45-day period specified in § 251.45(b)(1)(i) for distribution proceedings, or during the 45-day period specified in § 251.45(b)(2)(i) for rate adjustment proceedings, as appropriate, any party may petition the Librarian of Congress to dispense with formal hearings, and have the CARP decide the controversy or rate adjustment on the basis of written pleadings. The petition may be granted if—

(1) The controversy or rate adjustment, as appropriate, does not involve any genuine issue of material fact; or

(2) All parties to the proceeding agree, in writing, that a grant of the petition is appropriate.

14. In § 251.43, paragraph (a) is revised to read as follows:

§ 251.43 Written cases.

(a) All parties who have filed a notice of intent to participate in the hearing shall file written direct cases with the Copyright Arbitration Royalty Panel, and with other parties in the manner in which the Librarian of Congress shall direct in accordance with § 251.45(b).

* * * * *

15. Section 251.45 is amended by revising the section heading and paragraphs (a)–(c) to read as follows:

§ 251.45 Discovery and prehearing motions.

(a) *Request for comment, notice of intention to participate.* In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate. In the case of a rate adjustment proceeding, the Librarian of Congress shall, after receiving a petition for rate adjustment filed under § 251.62, or, in the case of noncommercial educational broadcasting and satellite carrier, prior to the commencement of proceedings, publish in the **Federal Register** a notice requesting interested parties to comment on the petition for rate adjustment. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

(b) *Precontroversy discovery, filing of written cases, scheduling.* (1)(i) In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must serve a complete copy of its written direct case on each of the parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, parties to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under § 251.41(b), and objections to arbitrators appearing on the arbitrator list under § 251.4. Replies to motions, petitions, and objections must be filed with the Librarian seven days from the filing of such motions, petitions, and objections with the Librarian.

(ii) Subject to § 251.72, the Librarian shall establish, prior to the commencement of the 45-day period, the date on which arbitration proceedings will be initiated.

(2) (i) In the case of a rate adjustment proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must serve a complete copy of its written direct case on each of the parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, parties to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under § 251.41(b), and objections to arbitrators appearing on the arbitrator list under § 251.4. Replies to motions, petitions and objections must be filed with the Librarian seven days from the filing of such motions, petitions, and objections with the Librarian.

(ii) Subject to § 251.64, the Librarian shall establish, prior to the commencement of the 45-day period, the date on which arbitration proceedings will be initiated.

(c) *Discovery and motions filed with a Copyright Arbitration Royalty Panel.* (1) A Copyright Arbitration Royalty Panel shall designate a period following the filing of written direct and rebuttal cases with it in which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.

(2) After the filing of written cases with a CARP, any party may file with a CARP objections to any portion of another party's written case on any proper ground including, without limitation, relevance, competency, and failure to provide underlying documents. If an objection is apparent from the face of a written case, that objection must be raised or the party may thereafter be precluded from raising such an objection.

* * * * *

§ 251.47 [Amended]

15. Section 251.47(l) is amended by removing "for them" and adding "of any given witness" after the word "cross-examination" each place it appears.

16. Section 251.51 is amended by revising the section heading to read as follows:

§ 251.51 Closing the record.

* * * * *

§ 251.52 [Amended]

17. Section 251.52(c) is amended by removing "an applicant" in the third sentence and adding "a party".

§ 251.53 [Amended]

18. Section 251.53(a) is amended by adding "and any replies thereto" after "conclusions of law" in the first sentence.

§ 251.54 [Amended]

19. Section 251.54(a) is amended by removing "After the submission of the panel's report to the Librarian of Congress, the" and adding "The".

20. In section 251.54(c), the third sentence is removed.

Subpart F—Rate Adjustment Proceedings

21. In section 251.60, the first sentence is revised to read as follows:

§ 251.60 Scope.

This subpart governs only those proceedings dealing with royalty rate adjustments affecting cable (17 U.S.C. 111), the production of phonorecords (17 U.S.C. 115), performances on coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116), noncommercial educational broadcasting (17 U.S.C. 118) and satellite carriers (17 U.S.C. 119). * * *.

22. In section 251.61, paragraph (d) is added to read as follows:

§ 251.61 Commencement of adjustment proceedings.

* * * * * *

(d) In the case of the satellite carrier compulsory license, rate adjustment proceedings shall commence on January 1, 1997, in accordance with 17 U.S.C. 119(c)(3)(A), for satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with 17 U.S.C. 119(c)(2).

23. Section 251.63 is revised to read as follows:

§ 251.63 Consideration of petition; settlements.

(a) To allow time for the parties to settle their differences regarding rate adjustments, the Librarian of Congress shall, after the filing of a petition under § 251.62 and before the 45-day period specified in § 251.45(b)(2)(i), designate a 30-day period for consideration of their settlement. The Librarian shall cause notice of the dates for that period to be published in the **Federal Register**.

(b) In the case of a settlement among the parties to a proceeding, the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.

24. In § 251.64, the first sentence and third sentences are revised to read as follows:

§ 251.64 Disposition of petition; initiation of arbitration proceeding.

After the end of the 45-day precontroversy discovery period, and after the Librarian has ruled on all motions and objections filed under § 251.45, the Librarian will determine the sufficiency of the petition, including, where appropriate, whether one or more of the petitioners' interests are "significant." * * * The same declaration and notice of initiation shall be made for noncommercial educational broadcasting and the satellite carrier compulsory license in accordance with 17 U.S.C. 118 and 119, respectively.

* * *

25. Section 251.65 is revised to read as follows:

§ 251.65 Deduction of costs of rate adjustment proceedings.

In accordance with 17 U.S.C. 802(h)(1), the Librarian of Congress and the Register of Copyrights may assess the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the rate adjustment proceedings directly to the parties participating in the proceedings.

§ 3251.7 [Removed]

§§ 251.73 and 251.74 [Redesignated as §§ 251.72 and 251.73]

26. Section 251.72 is removed and §§ 251.73 and 251.74 are redesignated as §§ 251.72 and 251.73.

PART 252—FILING OF CLAIMS TO CABLE ROYALTY FEES

27. The authority citation for part 252 continues to read as follows:

Authority: 17 U.S.C. 111(d)(4), 801, 803.

28. Section 252.3(a)(3) and (4) are revised, and paragraph (d) is removed as follows:

§ 252.3 Content of claims.

(a) * * *

(3) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim, and the name of each claimant to the joint claim. For this purpose, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership affiliate agreements, or to list the name of each of its members or affiliates in the joint claim.

(4) For individual claims, a general statement of the nature of the claimant's copyrighted works and identification of at least one secondary transmission by a cable system of such works establishing a basis for the claim. For joint claims, a general statement of the nature of the joint claimants' copyrighted works and identification of at least one secondary transmission of one of the joint claimants' copyrighted works by a cable system establishing a basis for the joint claim.

* * * * *

29. Section 252.4(a) and (e) are revised to read as follows:

§ 252.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if: (1) They are hand delivered, either by the claimant, the claimant's agent, or a private delivery carrier, to: Office of the Register of Copyrights, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540, during normal business hours during the month of July; or

(2) They are addressed to: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024, and are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

* * * * *

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt showing that it was properly mailed or timely received. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted as proof in lieu of the receipt.

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

30. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

§ 253.10 [Amended]

31. Section 253.10 is amended by removing "Copyright Office" each place it appears and adding "Librarian of Congress".

PART 257—FILING OF CLAIMS TO SATELLITE CARRIER ROYALTY FEES

32. The authority citation for part 257 continues to read as follows:

Authority: 17 U.S.C. 119(b)(4).

33. Section 257.3(a) (3) and (4) are revised, and paragraph (d) is removed as follows:

§ 257.3 Content of claims.

(a) * * *

(3) If the claim is a joint claim, a concise statement of the authorization of the filing of the joint claim, and the name of each claimant to the joint claim. For this purpose, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliate agreements, or to list the name of each of its members or affiliates in the joint claim.

(4) For individual claims, a general statement of the nature of the claimant's copyrighted works and identification of at least one secondary transmission by a satellite carrier of such works establishing a basis for the claim. For joint claims, a general statement of the nature of the joint claimants' copyrighted works and identification of at least one secondary transmission of one of the joint claimants' copyrighted works by a satellite carrier establishing a basis for the joint claim.

* * * * *

34. Section 257.4 (a) and (e) are revised to read as follows:

§ 257.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if: (1) They are hand delivered, either by the claimant, the claimant's agent, or a private delivery carrier, to: Office of the Register of Copyrights, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540, during normal business hours during the month of July; or

(2) They are addressed to: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024, and are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

* * * * *

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt showing that it was properly mailed or timely received. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted as proof in lieu of the receipt.

PART 259—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

35. The authority citation for part 259 continues to read as follows:

Authority: 17 U.S.C. 1007(a)(1).

36. In Section 259.3, paragraph (d) is revised, and paragraph (f) is removed as follows:

§ 259.3 Content of claims.

* * * * *

(d) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim, and the name of each claimant to the joint claim.

* * * * *

37. Sections 259.5 (a) and (e) are revised to read as follows:

§ 259.5 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if:

(1) They are hand delivered, either by the claimant, the claimant's agent, or a private delivery carrier, to: Office of the Register of Copyrights, Room 403, James Madison Memorial Building, 101 Independence Avenue SE., Washington, DC 20540, during normal business hours during the month of January or February; or

(2) They are addressed to: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024, and are deposited with sufficient postage with the United States Postal Service and bear a January or February U.S. postmark.

* * * * *

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt showing that it was properly mailed or timely received. No affidavit of an officer or employee of the claimant, or of a postal worker will be accepted as proof in lieu of the receipt.

Dated: November 29, 1994.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–30045 Filed 12–6–94; 8:45 am]

BILLING CODE 1410–33–P

37 CFR Part 259

[Docket No. 94–3 CARP]

Representation for Claiming DART Royalties in Musical Works

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of interim rule; and request for comments.

SUMMARY: The Copyright Office of the Library of Congress is waiving the rule that requires a performing rights organization to have written authorization in order to represent its members and affiliates for 1993 and 1994 DART royalties in the Musical Works Fund. At the same time we waive the rule, we seek comment on whether a performing rights society should have separate, specific, written authorization from its members to collect DART royalties for its members or affiliates.

DATES: The waiver of § 259.2 is effective December 7, 1994. Written comments should be received on or before February 6, 1995.

ADDRESSES: Fifteen copies of written comments should be addressed, if sent by mail, to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, Room LM–407, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

Parties that import and distribute in the United States or manufacture and distribute in the United States any digital audio recording technology (DART), either a device or audio recording medium, must deposit royalties with the Copyright Office under the Audio Home Recording Act (AHRA) for ultimate distribution to interested copyright parties. The AHRA defines "interested copyright parties" as copyright owners and any association or other organization representing them. 17 U.S.C. 1001(7). If the parties do not reach distribution agreements among themselves, copyright arbitration royalty panels (CARPs), administered by the Library of Congress and the Copyright

Office, determine what joint or individual claimants receive.

In order to qualify, copyright owners must file a claim in January or February of each calendar year for royalties collected during the preceding year. 17 U.S.C. 1006(a)(2), 1007(a)(1). The DART Funds are divided into the Sound Recordings Fund and the Musical Works Fund. This interim rule deals only with the Musical Works Fund.

II. Representation by Performing Rights Organizations

Until it was abolished on December 17, 1993, the Copyright Royalty Tribunal (CRT) prescribed the "form and manner" for filing DART claims. Copyright Royalty Tribunal Reform Act of 1993, Public Law No. 103–198, 107 Stat. 2304 (eliminating former Chapter 8 of 17 U.S.C.). Shortly after the October 28, 1992, enactment of the AHRA, an issue arose concerning the filing of claims to royalties. That issue was the extent of proof that performing rights organizations were required to present in order to demonstrate proper representation of their members and affiliates. The CRT invited public comment in an Advance Notice of Rulemaking. 57 FR 54542 (Nov. 19, 1992). On January 29, 1993, the CRT adopted a rebuttable inference that performing rights organizations represented their respective members and affiliates (hereafter "members") in royalty proceedings. 58 FR 6441, 6444 (Jan. 29, 1993). The interim regulations also directed the parties to file a report, by June 1, 1993, on the issue. Subsequently, on October 18, 1993, the CRT published final regulations requiring such organizations to submit separate, specific, and written authorization to represent their members. Notice Adopting Final Regulations to Implement the Audio Home Recording Act of 1992, 58 FR 53822 (Oct. 18, 1993).

On November 3, 1993, the performing rights organizations—the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc. (SESAC) (hereafter Performing Rights Organizations) filed with the CRT a petition to reopen for reconsideration the rulemaking proceeding that resulted in the CRT's final rule. On December 3, 1993, the CRT officially held the petition in abeyance. Order, dated Dec. 3, 1993, *In the Matter of Digital Recording Technology Act; Implementation*, CRT Docket No. 92–3–DART.

On December 17, 1993, the President signed into law the Copyright Royalty Tribunal Reform Act of 1993 (CRT 'Reform Act'). Effective immediately upon enactment, the CRT Reform Act eliminated the CRT and transferred its responsibilities to ad hoc CARPs. The new act directed the Librarian of Congress to convene CARPs to adjust rates and distribute royalties. See 17 U.S.C. 111, 115, 116, 118, 119, and chapter 10.

Following Congress' direction in the CRT Reform Act, the Copyright Office issued a notice adopting the full text of the former CRT's rules and regulations on an interim basis. 58 FR 67690 (Dec. 22, 1993). We made only slight technical changes to those rules, stating that we intended to review and revise them during the course of a future rulemaking. *Id.* We then published proposed regulations that revised the adopted CRT rules to adapt them to the requirements of the new CARP system. 59 FR 2550 (Jan. 18, 1994). We concluded that we were not a successor agency of the CRT, and that Congress intended to establish an entirely new system. Therefore, the proceedings the CRT had begun but not concluded by the effective date of the CRT Reform Act would not be taken up where they had been left, but would rather be begun anew under the new CARP regime. *Id.* at 2551.[1] The Copyright Royalty Tribunal's final rule requiring Performing Rights Organizations to submit separate, specific, and written authorization to represent their members is stated in section 259.2.

On February 15, 1994, the Performing Rights Organizations filed a comment with the Copyright Office seeking to reconsider the rule, now adopted by the Copyright Office, that required separate, specific, written authorization from Performing Rights Organization members. (*In the Matter of Copyright Arbitration Royalty Panels: Rules and Regulations*, Copyright Office Docket No. RM 94–1). Essentially in response to our Notice of Proposed Rulemaking Comment 4, the Performing Rights Organizations asked that their comments either serve to reopen the CRT's former rulemaking proceeding or that the Office consider the matter anew.

On February 23, 1994, the Gospel Music Coalition and Copyright Management, Inc., jointly replied to the Performing Rights Organizations' comment and opposed reconsideration of the issue. *Id.* Reply comment 10.

[1] Copyright Office revised and renumbered rules that had been found in 37 CFR part 311 of the CRT's regulations as 37 CFR Part 257.

III. Petition for Inference of Agency

In commenting on our adoption of the CRT rule, the Performing Rights Organizations assert that the rule disenfranchises the many writers and publishers who would otherwise be qualified to receive DART royalties. Following the CRT's interim rule, the performing rights societies contacted their members. One wrote to each of its members that unless the members notified the organization to the contrary, the organization would represent its member writers and publishers. Subsequently, when the CRT later required separate, specific, written authorization, the Performing Rights Organizations again attempted to contact more than two hundred thousand writer and publisher members in less than four months. Performing Rights Organizations states that they have agreements with the major foreign performing rights organizations to represent foreign writers and publishers whose works are exploited in the United States. They also assert that since not all eligible claimants responded to the writing, a significant number of members may still have the impression that the Performing Rights Organizations are representing their claims and that the CRT's final rule effectively leaves these members without an avenue to present their claims. *Id.* Comment 4 at 4–8.

The Performing Rights Organizations also urge that even if the Copyright Office rejects the concept of a permanent rebuttable inference, the rebuttable inference should extend through the 1993 DART distribution proceeding. Claims for 1993 royalties were required to be filed during the months of January and February 1994. The Performing Rights Organizations claim that even with the mass mailings following the Tribunal's final ruling, there was no practical way to obtain all of the required signed written authorizations before the filing period expired. They also suggest that the abolition of the CRT effectively disenfranchised the Performing Rights Organizations' members and affiliates, since it eliminated their only forum for being reheard on this issue. The Performing Rights Organizations also contend that further prejudice will result to their members and affiliates because of a private settlement, entered into by all joint claimant groups and all but one of the individual claimants to the Musical Works Fund, that links distribution of 1992 DART royalties, to which the rebuttable inference of agency applies, to the outcome of the 1993 proceedings, to which the rebuttable

presumption would not apply. *Id.*, at 12–15.

IV. Opposition for Reconsideration

The Gospel Music Coalition and Copyright Management, Inc., oppose reconsideration of the issue. They believe the matter has been amply briefed and settled by the CRT, and no new issues of fact or law have been raised. They oppose the rebuttable presumption of agency and urge the Copyright Office not to disturb the final regulation. Reply Comment 10, Notice of Proposed Rulemaking (94–1).

The Gospel Music Coalition and Copyright Management, Inc., note that the CRT's rationale for granting a temporary inference of agency is no longer applicable, since the time pressures have been greatly eased. Moreover, they state that since the CRT specifically ruled in January 1993 that the AHRA did not grant Performing Rights Organizations special entitlement to make claims on behalf of their members more than a year remained until the end of the filing period. They contend this was ample time to obtain the required authorizations from members. Furthermore, they argue that all organizations had the same opportunity to obtain written authorizations from their members. They state that if the Copyright Office adopts the rebuttable inference in favor of the Performing Rights Organizations, it will give these organizations a benefit over other group claimants. Moreover, the Gospel Music Coalition and Copyright Management, Inc., claim that the silence of members should not be considered as implied consent to representation by a performing rights society, and that excusing the performing rights societies from obtaining separate, specific, written authorizations to file claims grants these organizations preferential treatment. *Id.*

V. Policy Decision and Request for Comments

The Copyright Office has not considered this issue. Less than 30 days before the CRT Reform Act was enacted, the CRT expressly ordered the Performing Rights Organizations' petition to reconsider to be held in abeyance. In our December 22 rule, we noted that we did not consider the Office to be a successor agency to the CRT. Therefore, matters pending before the CRT would have to begin anew.

On May 9, 1994, we issued interim CARP regulations. At that time we noted that the Performing Rights Organizations' comment serving as a petition to reopen was actually a petition for reconsideration of a pending CRT matter and that we would consider it in a separate rulemaking proceeding. 59 FR 23964, 23966 (May 9, 1994). We are now addressing that matter, and the Copyright Office requests comments on the issue of whether Performing Rights Organizations need separate, specific, and written authorization to represent members and affiliates in collecting DART musical works royalties. Any party who has already filed comments on this issue with the former CRT may simply incorporate those comments by reference.

Because we are reconsidering the rule, we are waiving the rule adopted at 37 CFR 259.2, and inferring an agency relationship between the Performing Rights Organizations and their members for the 1993 and 1994 DART royalty distribution. This rebuttable inference will be utilized solely for the purpose of filing claims for, and distribution of, 1993 and 1994 DART royalties payments. We include 1994 in the waiver of our rules because the parties have already sought and been granted consolidation of 1993 and 1994 DART royalties. Therefore, it would be cumbersome to have different rules for the consolidated proceeding. If a member files an individual claim or grants express authority to another agent, such action will rebut the implied agency relationship. This action is without precedential value and shall not prejudice the Copyright Office's ultimate determination of the issue.

List of Subjects in 37 CFR Part 259

Claims, Copyright, Digital audio reading devices, Media.

Dated: December 1, 1994.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

Accordingly, 37 CFR part 259 is amended as follows:

PART 259

1. The authority citation for part 259 continues to read as follows:

Authority: 17 U.S.C. 1007 (a)(1).

§ 259.2 [Suspended]

2. Section 259.2 is suspended effective December 7, 1994, through February 28, 1995.

[FR Doc. 94–30046 Filed 12–6–94; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI48–01–6711C; FRL–5112–9]

Approval and Promulgation of Implementation Plans; Wisconsin Sulfur Dioxide Attainment and Maintenance Plan Revision; Interim Final Determination that State has Corrected the Deficiency

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is publishing elsewhere in this **Federal Register** a direct final rule fully approving revisions to the Wisconsin State Implementation Plan (SIP) for the Rhinelander, Wisconsin sulfur dioxide (SO_2)) nonattainment area. The revisions concern rules for certain sources of SO_2) in Rhinelander, Wisconsin. USEPA is also publishing a proposed rulemaking in this **Federal Register** to provide the public with an opportunity to comment on USEPA's action. If a person submits adverse comments on USEPA's proposed action within 30 days of publication of the proposed and direct final actions, USEPA will withdraw its direct final action and will consider any comments received before taking final action on the State's submittal. Based on the proposed full approval, USEPA is making an interim final determination by this action that the State has corrected the deficiency for which a sanctions clock began on May 13, 1993. This action will defer the application of the offset sanction and defer the application of the highway sanction. Although this action is effective upon publication, USEPA will take comment. If no comments are received on USEPA's proposed approval of the State's submittal, the direct final action published in this **Federal Register** will also finalize USEPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on USEPA's proposed approval and the interim final action, USEPA will publish a final rule taking into consideration any comments received.

EFFECTIVE DATE: December 7, 1994.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the state submittal and USEPA's analysis, which are the basis for this action, are available for inspection at the following address: (It is recommended that you telephone Christos Panos at (312) 353–8328 or Sheila Breen at (312) 886–6053, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos/Sheila Breen, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION:

I. Background

On April 28, 1989 the Wisconsin Department of Natural Resources (WDNR) submitted a revision to Wisconsin's SO_2 SIP to USEPA, consisting of Wisconsin State Rule NR 418.07, for which USEPA published a final disapproval on May 13, 1993 (58 FR 28362). The USEPA's disapproval action started an 18-month clock for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP) under section 110(c) of the Act. The State subsequently submitted a revision to its SIP for the Rhinelander, Wisconsin SO_2 nonattainment area on October 21, 1994. The USEPA has taken direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the rules section of this **Federal Register**, USEPA is issuing a direct final full approval of the State of Wisconsin's submittal of the Rhinelander SO_2 nonattainment area SIP. In addition, in the proposed rules section of this **Federal Register**, USEPA proposes full approval of the State's submittal.

II. USEPA Action

Based on the proposed full approval set forth in this **Federal Register**, USEPA believes that it is more likely than not that the State has corrected the original disapproval deficiency that started the sanctions clock and, therefore, USEPA is taking this interim final action finding that the State has corrected the deficiency, effective on publication. This action does not stop the sanctions clock that started under section 179 for this area on May 13, 1993. However, this action will defer the application of the offset sanction and will defer the application of the highway sanction. *See* 59 FR 39832 (August 4, 1994) to be codified at 40 CFR 52.31. If USEPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any applied, stayed or deferred sanctions.

The USEPA is also providing the public with an opportunity to comment on this final action. If based on any comments on this action and any comments on USEPA's proposed full approval of the State's submittal, USEPA determines that the State's submittal is not fully approvable and this final action was inappropriate, USEPA will take further action to disapprove the State's submittal and to find that the State has not corrected the original disapproval deficiency. As appropriate, USEPA will also issue an interim final determination or a final determination that the deficiency has not been corrected. In addition, the sanctions consequences described in the sanctions rule will also apply. *See* 59 FR 39832.

III. Administrative Requirements

Because USEPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, USEPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] 5 U.S.C. 553(b)(B). The USEPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The USEPA has reviewed the State's submittal and, through its proposed and direct final action, is indicating that it is more likely than not that the State has corrected the deficiency that started the sanctions clock. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all that it can to correct the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through the notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the rulemaking approving the State's submittal. Therefore, USEPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while USEPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, USEPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this action is to relieve a restriction. See 5 U.S.C. 553(d)(1).

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action temporarily relieves the sources of additional burden potentially placed on them by the sanctions provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 14, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–29881 Filed 12–06–94; 8:45 am]

BILLING CODE 6560–50–P

[1] As previously noted, however, by this action USEPA is providing the public with a chance to comment on USEPA's determination after the effective date and USEPA will consider any comments received in determining whether to reverse such an action.

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40 CFR Part 52

[WI48–01–6711B; FRL–5112–8]

Approval and Promulgation of Implementation Plans; Rhinelander, Wisconsin Sulfur Dioxide Attainment and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving the State of Wisconsin's revision to its State Implementation Plan (SIP) for the Rhinelander, Wisconsin sulfur dioxide (SO_2) nonattainment area. This State revision request, dated October 21,

1994, was submitted to satisfy the requirements of section 110 and part D of the Clean Air Act (Act), and regulates certain sources of SO_2 in Rhinelander, Wisconsin.

The rationale for this approval is set forth in this final rule; additional information is available at the address indicated below. Elsewhere in this **Federal Register**, USEPA is proposing approval of, and soliciting public comment on, this requested SIP revision. If a comment, or a notice of intent to comment is received on this direct final rule by January 6, 1995, USEPA will then use this rulemaking as a proposed rule. Comments received will be addressed in a separate final rulemaking. Unless this final rule is commented upon, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule will be effective February 6, 1995, unless notice is received by January 6, 1995 that someone wishes to submit adverse comments. If the effective date is delayed due to adverse comments, notice withdrawing this final action will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the SIP revisions and USEPA's analysis are available for inspection during normal business hours at the following address. (It is recommended that you telephone Christos Panos at (312) 353–8328 or Sheila Breen at (312) 886–6053, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos/Sheila Breen, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 353–8328.

SUPPLEMENTARY INFORMATION:

I. Background

In 1981 and 1983, exceedances of the primary SO_2 NAAQS were monitored in Rhinelander, Wisconsin. On April 1, 1985 the State adopted Wisconsin State Rule NR 154.12(9), which regulated certain sources of SO_2 constructed before April 1, 1985 located within the corporate boundaries of Rhinelander, Wisconsin. The Rhinelander Paper Company (source), a paper mill, was the only source affected by the State Rule's limits. These limits proved ineffective to protect the NAAQS after three more exceedances which were attributable to the source were monitored in 1985.

On April 28, 1989 the Wisconsin Department of Natural Resources (WDNR) submitted a revision to Wisconsin's SO_2 SIP to USEPA, consisting of Wisconsin State Rule NR 418.07, to satisfy the requirements of section 110 and part D of the Act for the Rhinelander nonattainment area. The SO_2 limits included in the State Rule are summarized in USEPA's January 5, 1993 (58 FR 326) notice of proposed rulemaking (NPR). This rule was disapproved in final on May 13, 1993 (58 FR 28362), because the State had not shown that the rule provided for attainment and maintenance of the SO_2 NAAQS. After the 1993 final action of disapproval, USEPA notified the State of the commencement of sanctions clocks due to the disapproval. Further discussion is found within the August 30, 1994 Technical Support Document (TSD) from Sheila Breen to Gary Gulezian, the November 10, 1994 addendum to the TSD from Christos Panos to Gary Gulezian, and the **Federal Register** documents, dated January 5, 1993 and May 13, 1993, and will not be discussed here.

The latest SIP revision request dated October 21, 1994 includes Consent Order AM–94–38, effective August 22, 1994 and two letters (August 29, 1994 letter from WDNR to the source and an October 19, 1994 letter from the source to WDNR), which clarify certain items found in the Order such as storage of test samples and definitions. This 1994 SIP revision request was submitted to fulfill the requirements of section 110 and part D, and to cure the deficiency that led to the notification regarding sanctions.

II. Description and Analysis of State Submittal

The USEPA has reviewed the August 22, 1994 Consent Order AM–94–38, the Monitoring Data, and letters that were submitted in conjunction with the Rhinelander SO_2 SIP revision request, and is approving the SIP revision. Except for the emission limits for the stoker boilers, the limits for each SO_2 source in the proposed SIP revision are summarized in Wisconsin State Rule NR 418.07 and were detailed in USEPA's January 5, 1993 NPR. Background information for USEPA's 1993 NPR is contained in the January 5, 1993 **Federal Register** and will not be repeated here.

A technical review of the 1994 plan is further discussed within the August 30, 1994 TSD. The following discussion includes summaries of the 1994 submittal's completeness determination, adherence to the Act's part D, section 172(c) nonattainment plan provisions, and the technical review that USEPA conducted.

(A). Completeness Determination

States are required to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. The Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. The USEPA also must determine whether a submittal is complete and therefore warrants further USEPA review and action. The USEPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991).

The State of Wisconsin held a public hearing on September 13, 1994 to receive public comment on the implementation plan for the Rhinelander SO_2 nonattainment area. Following the public hearing, the plan was adopted by the State and signed by the Governor's designee and submitted to USEPA on October 21, 1994 as a proposed revision to the SIP.

The SIP revision was reviewed by USEPA to determine completeness shortly after its submittal, and was found to be complete. A letter dated November 8, 1994 was forwarded to the Director, WDNR, indicating the completeness of the submittal and the next steps to be taken in the review process.

(B). Nonattainment Plan Provisions (Act Part D, Section 172(c))

With this submission, Wisconsin will have a fully approved SO_2 SIP meeting all of the applicable Part D requirements for the Rhinelander nonattainment area. The following discusses how the submission complies with the pertinent provisions of section 172(c), which sets forth the requirements for Part D SO_2 SIPs.

Section 172(c)(1) In General—The plan complies with the requirements to implement reasonably available control measures by providing for immediate attainment of the SO_2 NAAQS through the emission limits and operating restrictions imposed on the source by Consent Order AM–94–38. By providing for immediate attainment, the plan also satisfies the requirements of section

192(b) that provide for attainment by November 15, 1995.

Section 172(c)(2) RFP—Reasonable further progress is achieved due to the immediate effect of the emission limits and plantwide cap that is discussed within the plan.

Section 172(c)(3) Inventory—An inventory of the actual SO_2 emissions from the stoker and cyclone boilers has been provided and is found to be acceptable.

Section 172(c)(5) Permits for New and Modified Major Stationary Sources—Any new or modified sources constructed in the area must comply with a State submitted and Federally approved New Source Review program. The State currently has an approved Federally delegated program.

Section 172(c)(6) Other Measures—The plan provides for immediate attainment of the SO_2 NAAQS through the emission limits and operating restrictions that are set forth within Consent Order AM–94–38. By adhering to more stringent limits for the stoker boilers and presently setting an overall plantwide emission cap, the area should continue to attain the SO_2 NAAQS.

Section 172(c)(7) Compliance with section 110(a)(2)—This submission complies with section 110(a)(2). With respect to section 110(a)(2)(K), under which USEPA generally requires modeling in the case of SO_2, USEPA notes that the Industrial Source Complex (ISC) model used by WDNR has been shown to underpredict ambient SO_2 concentrations in the Rhinelander area, especially on known exceedance days. Therefore, as described in more detail below, in this instance, an alternative methodology using the rollback analysis was needed and has been used.

Section 172(c)(8) Equivalent Techniques—Since modeling attainment of the SO_2 NAAQS is not achievable, an alternative methodology using the rollback analysis to set a plantwide emissions cap was required. This is further discussed within the August 30, 1994 TSD.

Section 172(c)(9) Contingency Measures—A plan should be provided for the implementation of specific measures if the area fails to make reasonable further progress (i.e., contingency measures), or to attain the primary NAAQS referenced above. The State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (General Preamble), which was proposed within the **Federal Register** on April 16, 1992, provides guidance on SIP requirements for SO_2 nonattainment areas. The General Preamble discusses contingency measures for SO_2 controls that fail to attain the NAAQS. Therefore, USEPA interprets "contingency measures" for SO_2 to include the ability to rely on comprehensive State programs to identify sources of violations and to undertake an aggressive follow-up program of compliance and enforcement. Wisconsin Administrative Code, State Rule NR 404.05(6) dictates that the NAAQS may not be exceeded within the State of Wisconsin. Wisconsin State Rule NR 404.08(2) allows the State to be more restrictive with emission limits than those prescribed within an implementation plan or air pollution control rules where emissions cause or substantially contribute to exceeding an air standard in a localized area.

The USEPA notes that through the issuance of Consent Order AM–94–38, the State has used these rules in context of the Rhinelander area SO_2 exceedances. These exceedances were determined to be the result of excess SO_2 emissions from the Rhinelander Paper Company. The USEPA believes that the existence of these state rules and WDNR's program to implement them satisfies the requirements of section 172(c)(9).

(C). Review of Technical Merits of Plan

(1). Emission Limits/Plantwide Cap: Due to ISC's apparent underprediction of ambient SO_2 concentrations, the State used the rollback analysis to determine appropriate emissions limits for the source. A rollback analysis takes a monitored ambient exceedance recorded during a specific set of facility operating conditions and determines the amount of the exceedance due to each of the source's SO_2 emitting operations in use at that time. These estimates are then linearly "rolled back" to acceptable SO_2 emission limits which provide for attainment of the NAAQS under that set of operating conditions (refer to 58 FR 326).

At the time of the exceedance, the source was operating its cyclone boiler and only two of its five stoker boilers. A rollback analysis only accounts for those operations that were running at the time of the exceedance. However, the source requires the flexibility of using multiple scenarios of boiler operations for economic reasons. Therefore, the source accepted an overall daily SO_2 emission cap for the entire facility. This cap will assure protection of the SO_2 NAAQS, while still allowing for operational flexibility. For further discussion on the rollback analysis, please refer to the August 30, 1994 TSD.

(2). Sampling/Testing and Additional Limits: Sampling and Testing of the coal and wood waste sludge is discussed within the August 30, 1994 TSD. Sampling and testing followed USEPA methodologies and ASTM Practices. Net SO_2 emissions were determined using AP–42 Estimation Factors. Additional "trigger limits" were set for the boilers, which requires additional sulfur testing of prior fuel if the current fuel is found to exceed 90 percent of the enforceable SO_2 emission limit.

(3). Monitoring: The source has agreed to conduct meteorological monitoring. The State will conduct additional ambient monitoring, which USEPA requested for additional background information on local conditions. The original hillside ambient monitor that recorded the original violations will be maintained indefinitely. No recorded exceedances have been monitored since the last SIP revision request was submitted to USEPA on April 28, 1989.

III. Final Action

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on Februray 6, 1995. However, if we receive a notice of intent to comment by January 6, 1995, USEPA will publish a document that withdraws this action, and will address the comments received in the final rule on the requested SIP revision, which has been proposed for approval in the proposed rules section of this **Federal Register**. The public comment period will not be extended or reopened.

IV. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for a revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S.E.P.A., 427 U.S. 246, 256–66 (1976).

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 6, 1995. Filing a petition for reconsideration by the Administrator of this 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 a rule. This action may not be challenged later in proceedings to enforce its requirements. (section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: November 14, 1994.

Valdas V. Adamkus,

Regional Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. 52.2570 is amended by adding paragraph (c)(79) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(79) On October 21, 1994, the Wisconsin Department of Natural Resources (WDNR) submitted a plan modifying the SO_2 emission limits applicable to Rhinelander Paper Company facility, located in the City of Rhinelander, Oneida County, Wisconsin.

(i) *Incorporation by reference.*

(A) A Consent Order (AM–94–38), effective August 22, 1994 issued by the Wisconsin Department of Natural Resources (WDNR) and signed by Donald F. Theiler for the WDNR and Melvin L. Davidson for the Rhinelander Paper Company. Rhinelander Paper Company is located in Rhinelander (Oneida County), Wisconsin. This Order limits the overall SO_2 emissions from the Rhinelander Paper Company, and imposes more stringent SO_2 limits for the source's stoker and cyclone boilers and vapor compression evaporator. Sampling and testing of fuel, as well as monitoring criteria are documented within the Order.

(B) A letter dated August 29, 1994 from the WDNR to Jerry Neis of Rhinelander Paper Company, requesting clarification for sampling methodologies for all fuel and the source of the sludge used as a fuel source.

(C) A response letter dated October 19, 1994 from Jerome T. Neis of Rhinelander Paper Company to the WDNR, detailing sampling methodologies for all fuel and clarifying the source of the sludge used as a fuel source.

[FR Doc. 94–29880 Filed 12–06–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73, and 74

[MM Docket No. 92–168, FCC 94–259]

Broadcast Auxiliary Services; Low Power Television and Television and FM Radio Translator License Renewal

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adjusts the renewal schedule of FM radio and television (LPTV) stations to correspond with the renewal schedule of full service radio or television stations operating in the same state. The Commission also eliminates FCC Form 348 and revises FCC Form 303–S to include information requrest formerly included in Form 348. These actions are intended to decrease the administrative and paperwork burden on those licensees who own full service stations and LPTV or translator stations in the same but who must, under the current rules, file separate renewal application on different dates for each station.

EFFECTIVE DATE: These amendments to parts 1, 73, and 74 contain information collection requirements. They are not effective until approval of the Form 303–S revisions by the Office of Management and Budget. The Commission will publish notice of the effective date of these amendments when the required approval is received.

FOR FURTHER INFORMATION CONTACT: Roger Holberg or Rita McDonald, 202/632–7792.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to vary from 1 hour to 4 hours 30 minutes per response with an average of 1 hour 2 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0110), Washington, DC 20503.

This is a synopsis of the *Report and Order* in MM Docket No. 92–168, FCC 94–259, adopted October 12, 1994, and released November 4, 1994. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of the Report and Order

1. The Commission changes the license renewal dates of FM radio and television translator stations and low power television (LPTV) stations licensed under Part 74 of the Commission's Rules, to coincide with

those of full service radio or television stations operating in the same state. The Commission also eliminates FCC Form 348, *Application for Renewal of a Low Power TV, TV Translator, or FM Translator Station License*, and revises FCC Form 303–S, *Application for Renewal of License for Commercial and Noncommercial Educational AM, FM and TV Broadcast Stations*, to include information requests formerly included in Form 348. These form revisions will permit translator stations co-owned with primary stations in the same state which rebroadcast the signal of the primary station to file for license renewal on a single application form with their primary station.

2. The majority of parties commenting in response to the *Notice of Proposed Rule Making (MPRM)*[1] agreed with the Commission's initial view that conforming the renewal dates for full service and for FM and TV translators and LPTV stations in the same state would streamline the license renewal process, eliminate paperwork burdens on licensees and on the Commission, and simplify the renewal process for interested members of the public. By coordinating the renewal cycles and merging the application forms, the Commission anticipates saving licensees who own both full service stations and LPTV or translator stations in the same state, time spent in providing duplicate renewal information, and avoiding confusion as to the correct renewal dates. These revisions should also save Commission staff resources by reducing the likelihood of a licensee filing an application at the wrong time, which must then be returned by the Commission.

3. The *NPRM* noted that the transition to a revised renewal schedule would entail a one-time additional burden on cerain LPTV and translator stations whose license come up for renewal before those of the full service stations in their state. More particularly, it would result in some LPTV and translator stations receiving short term renewals in order to synchronize their renewal cycles with those of full service stations in their states. In order to allow such stations to file for renewal coincident with the renewal dates of full service stations in the same states, the *NPRM* discussed alternatives that would would avoid this situation. The Commission rejected one option, to allow such licensees to file for translator or LPTV renewal at their normal scheduled date, but with their next succeeding renewal date set to correspond with those of full service stations in their state. This option was dismissed because some licenses granted in this manner would run for a term beyond the maximum five or seven years (for TV and radio station licenses, respectively) prescribed in Section 307(c) of the Communications Act.

4. The *NPRM* suggested that, instead, such LPTV and translator stations could file for renewal twice during the transition period to the new schedule, once at their normal renewal time (for a short term license) and again when the full service stations in their states became due for renewal. This alternative would avoid conflict with Section 307(c), but concerned some of the commenters because it would force some licensees to file for renewal in as short a period as eight months, entailing additional administrative and cost burdens and providing additional opportunity for renewal challenges. Such parties believe that the additional risks and burdens outweigh the benefits to be gained from allowing full service station licensees to file full service, low power, and translator renewal applications at the same time.

5 The Commission believes that substantial savings to the Commission, broadcasters, and the public can be realized by conforming the renewal dates for translator and low power television stations to those for full service stations of the appropriate service (*i.e.*, radio or television) in the same state. We expect these savings to include a streamlined renewal process, the elimination of needless paperwork burdens and a reduction in the incidence of filing errors. Accordingly, we will grant translator and LPTV applicants filing for license renewal a short term renewal with the license period extending only until the end of the license period for full service stations of the relevant type located in the same state; at that time they will have to file again for a full term license renewal. The Commission recognizes that this action will require two renewal applications to be filed by some translator and low power licensees within a brief period of time. However, this is a modest, one-time cost that is more than counterbalanced by the long term savings that will accrue from the synchronization of renewal schedules and consolidation of forms that this action will achieve. Additionally, the Commission believes that the fear expressed by some commenters that accelerated renewal filings will be subject to increased renewal challenges appears to be one more of perception than substance. Only 3 challenges to LPTV station renewals were filed during the last renewal cycle (1991–1994); two of those were subsequently withdrawn. In the 1988–1991 renewal cycle fewer than six challenges were filed against translator applications.

6. Although, as discussed in detail in the full text of this decision, there does not appear to be any way to avoid the above-described one-time additional short term renewal for translators and LPTV stations located in some states without violating either Section 307(c) or 309 of the Communications Act of 1934 as amended (the Act), to alleviate the extra burden on some licensees, pursuant to Section 8(d)(2) of the Act, the Commission will waive the application fees for any translator or LPTV license renewal application that is required by this action to be filed within 26 months of the station's most recent prior renewal filing. In situations where full service stations must file for renewal prior to translator and LPTV stations in their state, the Commission will permit but not require the translator and LPTV stations to file an early renewal to place them on the same renewal schedule as full service stations in their state. The Commission strongly encourages translators and LPTV stations to file coincident with the corresponding full service stations for that state. By doing so, translator stations commonly-owned with primary stations in the same state which rebroadcast the signals of the primary station can realize the benefit of filing for renewal on a single application form in the upcoming renewal cycle as opposed to waiting until the following cycle. Licensees of translator and LPTV stations that do not elect to take advantage of this option will be required to file for license renewal at the time presently required by their license authorization. In this latter case, shorter term renewals will be issued for periods to expire coincident with the expiration date for full service station licenses in that state.

7. In a related matter, one commenter, the National Association of Broadcasters (NAB) requests that the Commission, in modifying FCC Form 303–S, include a certification that the applicant has complied with all relevant FM translator rules, particularly those relating to funding and support. In amending the Form 303–S as a result of the instant proceeding, the Commission will add to the form a certification related, but not identical, to that requested by NAB.

Administrative Matters

Final Regulatory Flexibility Analysis

8. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have

[1] 57 FR 36378 (August 13, 1992).

an one time negative impact on some small television and FM radio translators and low power television stations. As detailed in the full text of the *Report and Order*, low power television and FM radio and television translator licensees whose licenses expire before the renewal date of their full service counterparts in the same state will have to file for renewal twice, once at their normal time and once when the full service stations in their states are due for renewal. To alleviate this burden, the Commission will waive the application fees for any translator or low power television license renewal application that is required by this action to be filed within 26 months of the station's most recent prior renewal filing. The Commission believes that the advantages of allowing FM and television translators and low power television licensees to file at the same time as their full service counterparts in the same states outweigh the one time administrative burden necessary to bring such stations into their full service counterparts' renewal cycle. The full text of the Commission's final regulatory flexibility analysis may be found in paragraphs 11–13 of the text of the Commission's decision.

Ordering Clauses

9. Accordingly, *it is ordered*, Pursuant to Sections 4(i) and 303 of the Communications Act of 1934, as amended, that Parts 1, 73 and 74 of the Commission's Rules are amended as indicated below, effective upon approval of the form revisions by the Office of Management and Budget.

10. *It is further ordered*, That FCC Form 348 is eliminated and FCC Form 303–S is amended as indicated below. These form amendments are contingent on approval of the Office of Management and Budget, and therefore will become effective upon such approval.

List of Subjects

47 CFR Part 1

Reporting and recordkeeping requirements.

47 CFR Part 73

Radio broadcasting. Television broadcasting.

47 CFR Part 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Title 47, Parts 1, 73, and 74 of the Code of Federal Regulations are amended as follows:

PART 1—COMMISSION ORGANIZATION

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

Authority: 47 USC 151. 154.303. amd 309(j), unless otherwise noted.

§ 1.1104 [Amended]

2. Section 1.1104 is amended by removing all references to FCC Form No. 348 throughout the section and adding in its place FCC Form No. 303–S.

3. Section 1.2003 is amended by revising the reference to FCC 303–S and by removing the reference to FCC 348 to read as follows:

§ 1.2003 Applications affected.

* * * * *

FCC 303–S Application for Renewal of License for AM, FM, TV, Translator, or LPTV Station;

* * * * *

PART 73—RADIO BROADCAST SERVICES

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

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

5. Section 73.1020 is amended by revising paragraphs (a)(1) through (a)(18) to read as follows:

§ 73.1020 Station license period.

(a) * * *

(1) Maryland, District of Columbia, Virginia and West Virginia:

(i) Radio stations, October 1, 1995.

(ii) Television stations, October 1, 1996.

(2) North Carolina and South Carolina:

(i) Radio stations, December 1, 1995.

(ii) Television stations, December 1, 1996.

(3) Florida, Puerto Rico and the Virgin Islands:

(i) Radio stations, February 1, 1996.

(ii) Television stations, February 1, 1997.

(4) Alabama and Georgia:

(i) Radio stations, April 1, 1996.

(ii) Television stations, April 1, 1997.

(5) Arkansas, Louisiana and Mississippi:

(i) Radio stations, June 1, 1996.

(ii) Television stations, June 1, 1997.

(6) Tennessee, Kentucky and Indiana:

(i) Radio stations, August 1, 1996.

(ii) Television stations, August 1, 1997.

(7) Ohio and Michigan:

(i) Radio stations, October 1, 1996.

(ii) Television stations, October 1, 1997.

(8) Illinois and Wisconsin:

(i) Radio stations, December 1, 1996.

(ii) Television stations, December 1, 1997.

(9) Iowa and Missouri:

(i) Radio stations, February 1, 1997.

(ii) Television stations, February 1, 1998.

(10) Minnesota, North Dakota, South Dakota, Montana and Colorado:

(i) Radio stations, April 1, 1997.

(ii) Television stations, April 1, 1998.

(11) Kansas, Oklahoma and Nebraska:

(i) Radio stations, June 1, 1997.

(ii) Television stations, June 1, 1998.

(12) Texas:

(i) Radio stations, August 1, 1997.

(ii) Television stations, August 1, 1998.

(13) Wyoming, Nevada, Arizona, Utah, New Mexico and Idaho:

(i) Radio stations, October 1, 1997.

(ii) Television stations, October 1, 1998.

(14) California:

(i) Radio stations, December 1, 1997.

(ii) Television stations, December 1, 1998.

(15) Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon and Washington:

(i) Radio stations, February 1, 1998.

(ii) Television stations, February 1, 1999.

(16) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont:

(i) Radio stations, April 1, 1998.

(ii) Television stations, April 1, 1999.

(17) New Jersey and New York:

(i) Radio stations, June 1, 1998.

(ii) Television stations, June 1, 1999.

(18) Delaware and Pennsylvania:

(i) Radio stations, August 1, 1998.

(ii) Television stations, August 1, 1999.

* * * * *

6. Section 73.3500 is amended by revising the reference to Form 303–S and removing the reference to Form 348 to read as follows:

§ 73.3500 Application and report forms.

* * * * *

303–S Application for Renewal of License for AM, FM, TV, Translator, or LPTV Station.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

7. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, 554.

8. The heading for Part 74 is revised to read as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

9. Section 74.15 is amended by revising paragraph (d) to read as follows:

§ 74.15 Station license period.

* * * * *

(d) Initial licenses for low power TV, TV translator FM translator stations will ordinarily be issued for a period running until the date specified in Section 73.1020 of this chapter for full service stations operating in their State or Territory, or if issued after such date, to the next renewal date determined in accordance with Section 73.1020 of this Chapter. Lower power TV and TV translator station licenses will ordinarily be renewed for 5 years and FM translator station license will be renewed for 7 years. However if the FCC finds that the public interest or necessity will be served, it may issue either an initial license or a renewal thereof for a lesser term. The FCC may also issue a license renewal for a shorter term if requested by the applicant. The time of expiration of all licenses will be 3 a.m. local time, on the following dates, and thereafter to the schedule for full service stations in their states as reflected in Section 73.1020 of this Chapter:

(1) Nevada:

(i) FM translators, February 1, 1997.

(ii) LPTV and TV translator, February 1, 1998.

(2) California:

(i) FM translators, April 1, 1997.

(ii) LPTV and TV translators, April 1, 1998

(3) Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhodes Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, West Virginia, Ohio and the District of Colbumia:

(i) FM translators, June 1, 1997

(ii) LPTV and TV translators, June 1, 1998

(4) Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Missouri, Kentucky, Tennessee, Indiana, Illinois, Michigan, Wisconsin, Pureto Rico and the Virgin Islands:

(i) FM translators, August 1, 1997

(ii) LPTV and TV translators, August 1, 1998

(5) Oklahoma and Texas:

(i) FM translators, October 1, 1997

(ii) LPTV and TV translators, October 1, 1998

(6) Kansas and Nebraska:

(i) FM translators, December 1, 1997

(ii) LPTV and TV translators, December 1, 1998

(7) Iowa and South Dakota:

(i) FM translators, February 1, 1998

(ii) LPTV and TV translators, February 1, 1999

(8) Minnesota and North Dakota:

(i) FM translators, April 1, 1998

(ii) LPTV and TV translators, April 1, 1999

(9) Wyoming:

(i) FM translators, June 1, 1998

(ii) LPTV and TV translators, June 1, 1999

(10) Montana:

(i) FM translators, August 1, 1998

(ii) LPTV and TV translators, August 1, 1999

(11) Idaho:

(i) FM translators, October 1, 1995

(ii) LPTV and TV translators, October 1, 1996

(12) Washington:

(i) FM translators, December 1, 1995

(ii) LPTV and TV translators, December 1, 1996

(13) Oregon:

(i) FM translators, February 1, 1996

(ii) LPTV and TV translators, February 1, 1997

(14) Alaska, American Samoa, Guam, Mariana Islands and Hawaii:

(i) FM translators, April 1, 1996

(ii) LPTV and TV translators, April 1, 1997

(15) Colorado:

(i) FM translators, June 1, 1996

(ii) LPTV and TV translators, June 1, 1997

(16) New Mexico:

(i) FM translators, August 1, 1996

(ii) LPTV and TV translators, August 1, 1997

(17) Utah:

(i) FM translators, October 1, 1996

(ii) LPTV and TV translators, October 1, 1997

(18) Arizona:

(i) FM translators, December 1, 1996

(ii) LPTV and TV translators, December 1, 1997

* * * * *

10. The Note following Section 74.733 is amended by removing the reference to 348 and adding in its place 303–S.

Note.—The following form will not appear in the Code of Federal Regulations.

Instructions for FCC 303–S—Application for Renewal of License for AM, FM, TV, translators, or LPTV Station

(FCC FORM 303–S Attached)

A. This form is to be used in applying for renewal of license for a commercial or noncommercial AM, FM or TV broadcast station and FM translator, TV translator or Low Power TV broadcast station. It is also to be used in seeking the joint renewal of licenses for an FM or TV translator station and its co-owned primary FM, TV or LPTV station.

B. FCC Form 303–S consists of Sections I, II, III, IV, and V. Those Sections which do not apply to the station license being renewed should not be submitted as part of your application. Submit relevant sections only.

- All *applicants* must complete and submit *Sections I, II and V* of this form.
- Applicants seeking to renew only an *AM, FM or TV* station license must *ALSO* complete and submit Section III.
- Applicants seeking to renew only an *FM translator, TV translator or Low Power TV* station license must *ALSO* complete and submit *Section IV.*
- Applicants seeking to renew the licenses of both a translator (FM and TV) and *coowned* primary FM, TV or LPTV station on the same form should complete and submit *ALL* sections of this application.

C. References to FCC Rules are made in this application form. Before filling it out, the applicant should have on hand and be familiar with the current broadcast, translator and LPTV rules, which are contained in 47 Code of Federal Regulations. (CFR):

(1) Part 0 "Commission Organization"

(2) Part 1 "Practice and Procedure"

(3) Part 17 "Construction, Marking, and Lighting of Antenna Structures"

(4) Part 73 "Radio Broadcast Services"

(5) Part 74 "Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services"

FCC Rules may be purchased from the Government Printing Office, Washington, DC 20402. You may telephone the GPO Order desk at (202) 783–3238 for current prices.

D. An original and one complete copy of the 303–S renewal application, including all exhibits, must be prepared for each station license to be renewed, except that an original and one complete copy, including all exhibits, can be filed for the joint renewal of licenses for a translator and the translator's commonly owned primary station. The application with all required exhibits should be filed with the Federal Communications Commission in the manner and at the location specified in 47 CFR 0.401.

E. Replies to questions in this form and the applicant's statements constitute representations on which the FCC will rely in considering the application. Thus, time and care should be devoted to all replies, which should reflect accurately the applicant's responsible consideration of the questions asked. Include all information called for by this application. If any portions of the application are not applicable, so state. Defective or incomplete applications will be returned without consideration. Furthermore, inadvertently accepted applications are subject to dismissal.

F. In accordance with 47 CFR 1.65, the applicant has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

Section I—Fee Information

By law, the Commission is required to collect charges for certain of the regulatory services it provides to the public. Generally, applicants seeking to renew the license for a commercial AM, FM, TV, FM translator, TV translator or Low Power TV station are required to pay and submit a fee with the filing of FCC Form 303–S. However, governmental entities, which include any possession, state, city, county, town, village, municipal organization or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising sovereign direction and control over their respective communities or programs, are exempt from the payment of this fee. Also exempted from this fee are licensees of noncommercial educational radio or television broadcast stations. (This includes licensees of noncommercial educational FM and full service TV broadcast stations seeking renewal of the licenses for their translator or low power TV stations *provided* those stations operate on a noncommercial educational basis. Low Power TV or TV translator stations that rebroadcast the programming of a primary noncommercial educational station, but are not co-owned by the licensee of such a station, are required to file fees. In addition, noncommercial FM translators operating on a non-reserved channel (CH 221–300), and that are not co-owned by the licensee of the primary noncommercial educational station, are also required to file fees.) Renewal applicants that earlier obtained either a fee refund because of an NTIA facilities grant for the stations or a fee waiver because of demonstrated compliance with the eligibility and service requirements of 47 CFR 73.503 or 73.621, and that continue to operate those stations on a noncommercial basis, are similarly exempted from this fee. See 47 CFR 1.1112. To avail itself of any fee exemption, the renewal applicant must indicate its eligibility by checking the appropriate box in Question 2(B), Section I. FCC Form 303–S applications NOT involving the payment of a fee can be hand-delivered or mailed to the FCC's Washington, D.C. offices. See 47 CFR 0.401(a).

The Commission's fee collection program utilizes a U.S. Treasury lockbox bank for maximum efficiency of collection and processing. All FCC Form 303–S applications, which require the remittance of a fee, must be submitted to the appropriate post office box address. See 47 CFR 0.401(b). A listing of the required fee and the address to which FCC Form 303–S should be mailed or otherwise delivered is also set forth in the "Mass Media Services Fee Filing Guide" which is obtained either by writing to the Commission's Form Distribution Center, 2803 52nd Avenue, Hyattsville, Maryland 20871, or by calling Telephone No. (202) 418–FORM and leaving your request on the answering machine provided for this purpose. See also 47 CFR 1.1104.

Payment of any required fee must be made by check, bank draft or money order payable to the Federal Communications Commission, denominated in U.S. dollars, and drawn upon a U.S. financial institution. No postdated, altered or third-party checks will be accepted. DO NOT SEND CASH. Checks dated six months or older will not be acceptable for filing.

Parties hand-delivering FCC Forms 303–S may receive dated receipt copies by presenting copies of the applications to the acceptance clerk at the time of delivery. For mailed-in applications, a "return copy" of the application can be furnished provided the applicant clearly identifies the "return copy" and attaches it to a stamped, self-addressed envelope. Only one piece of paper per application will be stamped for receipt purposes.

For further information regarding the applicability of a fee, the amount of the fee or the payment of the fee, refer to the "Mass Media Services Fee Filing Guide."

Section II—Question-By-Question Guidelines

This section must be completed and submitted by all applicants regardless of the service of the station for which renewal is being sought.

Question 1. The name of the licensee applicant should be stated exactly as it appears on the station's existing license. The current street address or post office box used by the applicant for receipt of Commission correspondence should be set forth. If this information has been set forth in Question 1, Section I, it need not be repeated here.

Any change in the licensee's name, which does not involve a change in ownership requiring prior Commission approval, can be communicated to the Commission by letter. To report any change in the mailing address previously used by the licensee FCC Form 5072, entitled "Change in Official Mailing Address for Broadcast Station," should be promptly transmitted to the Commission. See 47 CFR 1.5.

Question 2. Applicants for AM, FM or TV stations should identify whether it has been licensed by the Commission as a commercial or noncommercial educational licensee. A licensee that merely elects to operate its station on a noncommercial basis is not considered to be a noncommercial educational licensee. The facility should be described by its service, call letters, and specific community of license or area as listed on the station's existing license. See 47 CFR 74.1201(a), 74.701(a) and 74.701(f) for definition of an FM translator, TV translator and low power TV broadcast stations respectively. For AM, FM or TV stations the location of the facility should be described in terms of the specific city or community to which the station is licensed. Translator and Low Power TV stations should specify the area the stations are licensed to serve.

Question 3. This question must be completed by a radio or television renewal applicant seeking to continue its authority to operate an FM Booster or TV booster station in conjunction with the primary station. The FM or TV booster station should be described in terms of its call letters and the name of the specific community which it serves.

Question 4. Aliens, foreign governments and corporations, and corporations of which less than 80% of the capital stock is owned or voted by U.S. citizens are prohibited from holding a broadcast station license. Where a corporate licensee is directly or indirectly controlled by another corporation, of which any officer or more than 25% of the directors are aliens or of which less than 75% of that corporation's stock is owned or voted by U.S. citizens, the Commission must consider whether denial of renewal would serve the public interest. Licensees are expected to employ reasonable, good faith methods to ensure the accuracy and completeness of their citizenship representations.

Question 5. Commission policies and litigation reporting requirements for broadcast, translator and LPTV station applicants are directed to focusing on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct. In responding to Question 6, applicants are advised that the parameters of the Commission's policies and requirements regarding character qualifications are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rcd 421 (1986), as modified, 5 FCC Rcd 3252 (1990) and 7 FCC Rcd 6564 (1992).

For the purpose of this question, the term "parties to the application" includes any individual or entity whose ownership or positional interest in the applicant is cognizable under the Commission's multiple ownership rules. See in this regard Report and Order in MM Docket No. 83–46, 97 FCC 2d 997 (1984), reconsideration granted in part, 58 RR 2d 604 (1985), further modified on reconsideration, 61 RR 2d 739 (1986).

Question 6. Each applicant should check the appropriate box to indicate whether a Commission grant of the proposed communications facility(ies) may or may not have a significant environmental impact as defined by 47 CFR 1.1307. Briefly, Commission grant of an application may have a significant environmental impact if any of the following are proposed:

(a) A facility is to be located in sensitive areas (e.g., an officially designated wilderness area, a wildlife preserve area, a flood plain) or will physically or visually affect sites significant in American history.

(b) A facility whose construction will involve significant changes in surface features.

(c) The antenna tower and/or supporting structure(s) will be equipped with high intensity white lights and are to be located in residential neighborhoods.

(d) The facilities or the operation of which will cause exposure of workers or the general public to levels of radio frequency radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz," (ANSI C95.1–1982), by the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017.

Note: In answering this question, applicants for renewal of FM translator

stations which transmit with an effective radiated power of 100 watts or less are excluded from the standards set forth in subparagraph (d) above. However, in determining the appropriate response to this question, such applicants must still perform an analysis of the subject facilities in the context of the matters set forth in subparagraphs (a)–(c) above.

If you answered No, a brief statement explaining the reasons why there will not be a significant environmental impact must be submitted. With respect to RF radiation exposure, the required statement must include a description of the steps that have been taken to protect the general public, station employees, and other persons authorized access to the tower from exposure to RF radiation levels in excess of the specified safety standards and that these steps comply with those required by OST Bulletin No. 65, October, 1985, entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation." The applicant must take into account, ALL non-excluded transmitters at and around the station's transmitter site; that is, contributions to environmental RF levels from all nearby radio and television stations, not just the applicant's station, must be considered.

If you answered Yes, submit the required Environmental Assessment (EA). The EA includes for antenna towers and satellite earth stations:

(a) A description of the facilities, as well as supporting structures and appurtenances, and a description of the site, as well as the surrounding area and uses. If high intensity white lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.

(b) A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (if any) made by, zoning, planning, environmental or other local, state or federal authorities on matters relating to environmental effect.

(c) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.

(d) A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects; and any alternative sites of facilities which have been or might reasonably by considered.

The information submitted in the EA shall be factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significant (e.g., wilderness area, wildlife preserve, natural migratory paths for birds and other wildlife, and sites of historic, architectural or archaeological value). In the case of historically, significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed in the National Register of Historic Places, 39 Fed. Reg. 6402 (February 19, 1974). It shall also detail any substantial change in the character of the land utilized (e.g., deforestation, water diversion, wetland fill, or other extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern of human intrusion into the area (e.g., necessitated by the operation and maintenance of the facilities).

The EA shall also be accompanied with evidence of site approval which has been obtained from local or federal land use authorities.

To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA, but adequate cross-reference to such information shall be supplied.

An EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility: (a) for determining whether their facilities in question will have a significant effect on the quality of the human environment and, (b) if it will affect the environment, for invoking the environmental impact statement process.

Section III—Question-By-Question Guidelines

The section must be completed and submitted only by applicants for AM, FM, or TV broadcast stations.

Question 1(a). Licensees of noncommercial educational and commercial radio and television broadcast stations are required by Commission regulation (47 C.F.R. Section 73.2080) to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. In conjunction therewith, every station with five or more full-time employees must file an employment report on or before May 31 of each year, identifying the station's staff by gender, race, or color and/or national origin in each of nine major job categories. See 47 C.F.R. Section 73.3612.

In addition, all AM, FM, and TV stations must file an original and one copy of an Equal Employment Opportunity Report (FCC From 396) with their renewal application. The EEO form is required of all such licensees even where they do not employ five or more full-time employees or where there are less than 5% minorities in the labor force (however, in such cases you need only complete the first 2 pages of the EEO form).

Question 1(b). Each noncommercial educational broadcast station licensee is required to submit a current and complete ownership report (FCC Form 323–E) with its station's renewal application. See 47 C.F.R. Section 73.361(d). In such cases, the question should be answered affirmately. However, if the Form 323–E submitted with the station's last renewal application is "up-to-date" and has been amended, a new ownership report need not be filed with the current renewal application. The applicant should then answer the question negatively and supply the filing date of that report and the call letters of the station for which it was submitted. An "up-to-date" Form 323-E ownership report is one that is current for each question on that report.

A commercial broadcast station licensee is required to submit a current and complete ownership report (FCC Form 323) once each year on the anniversary of the date that its license renewal application is required to be filed. See 47 C.F.R. Section 73.3615(a). Licensees of multiple commercial broadcast stations with different renewal anniversary filing dates may elect a single date to submit information, but the ownership reports may not be submitted more than one year apart. If no charges have occurred, the licensee may submit a written certification to that fact, instead of filing a new Form 323 each year. In addition, where the licensee is a partnership composed entirely of natural persons, the annual reporting requirements does not apply. Similarly, sole proprietorships are exempt from the requirement to file annually.

All commercial broadcast station licensee that are not exempt from the annual reporting program are required to file Form 323 SEPARATELY from their renewal applications. The annual ownership report (Form 323 or written certification), accompanied by its requisite fee payment for each station covered by that report, should be sent to the U.S. Treasury lockbox bank at the appropriate address and in the manner specified in the "Mass Media Services Fee Filing Guide." Additional information regarding the submission of this report us set fort in the Commission's Public Notice of June 6, 1990, entitled "Broadcast Annual Ownership Report."

Question 2. A licensee must maintain certain documents pertaining to its station in a file which is usually kept at the station's main studio or other accessible place in the community of licensee. The file must be available for inspection by anyone during regular business hours. The documents to be maintained generally include applications for a construction permit and for licensee renewal, assignment or transfer of control; ownership and employment reports; and quarterly lists of the community issues most significantly addressed by the station's programming during the preceding three months. In addition, commercial television licensees only are required to maintain a make available to the public certain records regarding children's programming and the amount of commercial matter aired during the station's broadcast of children's programming. A complete listing of the required documents and their mandatory retention periods is set forth in 47 C.F.R. Section 734.3526 and 73.3527.

Question 3. This question should be completed only by a commercial radio or television renewal applicant. Licensees for these stations should not that anytime it finds it necessary to cease broadcasting it must notify the Commission's Washington, D.C. office, by letter, not later than the 120th day of discontinued operation. Further, if a licensee finds it necessary to cease broadcasting in excess of 30 days, it must, no later than the 30th day of the station being silent, submit a letter request (no filing fee is

required) to the Commission's Washington, D.C. office for temporary authority to remain silent. The request must include the date the station ceased broadcasting; a detailed explanation of the reason why it was necessary to take the station off the air; efforts being made to restore service; and the date by which resumption of operation is anticipated. The request must also include a certification relating to Section 5301 of the Anti-Drug Abuse Act of 1988 (See, as an example, Section V, Certification (1), of the Form). Extensions of temporary authority to remain silent and must be timely requested if station operations do not resume within the time given. Licensees must notify the Commission's Washington, D.C. office, by letter, once operations have resumed, giving the date that operations resumed. See 47 C.F.R. Sections 73.1740 and 73.1750.

Question 4. This question should be completed by commercial TV applicants only. Programming directed to the educational and information needs of children is an identifiable unit of program material that is not a comical or promotional announcement, that is originally produced and broadcast for an audience of children 16 years of age and under, and that furthers, the positive development of the child in any respect, including, but not limited to, the child's cognitive/intellectual or emotional/social needs.

Questions 4(b) and (c). Commercial television licensees must limit the amount of commercial matter in "children's programming", which is defined for this purpose as programming originally produced and broadcast primarily for an audience of children 12 years of age and under. The children's programming commercial limitations are not more than 12 minutes of commercial mater per hour on weekdays and no more than 10.5 minutes of commercials on weekends. The commercial limits also apply *pro rata* to children's programs which are 5 minutes or more and which are not part of a longer block of children's programming. There are no restrictions on how commercial within the limits are configured within an hour's block of children's programming. *i.e.*, it is not necessary to prorate the commercial limits for separate children's programs within the hour.

Section IV—Question-by-Question Guidelines

This section must be completed and submitted only by applicants for FM or TV translator or LPTV broadcast station.

Question 1. An FM or TV translator or LPTV station is expected to provide continuous service except where cases beyond its control warrant interruption. Where causes beyond the control of the licensee make it impossible to continue operation, the station may discontinue operation for a period of 30 days without further authority from the FCC. However, notification if the discontinuance must be sent to the FCC in Washington, D.C. no later than 10 days after the discontinued operation. (See Section III, Question 3 of these Instructions for procedures for requesting temporary authority to remain silent if the licensee finds it necessary to cease training for more than 30 days.) Failure to operate for a period of 30 days of more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuation of operation and the license of the translator or LPTV station may be canceled at the discretion of the FCC. See 47 C.F.R. Sections 74.763 and 74.1263.

Questions 2 and 3. Section 325(a) of the Communications Act of 1934, as amended, prohibits the rebroadcast of the programs of a broadcast station without the express authority of the originating station. Where the renewal applicant is not the licensee of the originating station, written authority must be obtained prior to any rebroadcasting. Also, where the licensee has changed the station being rebroadcast, written notification must be made to the Commission in accordance with 47 C.F.R. Section 74.784 or 74.1251.

Question 4. This question should be answered by licensees of Low Power TV broadcast stations only. Licensees of Low Power TV broadcast stations are required by 47 C.F.R. Section 73.2080 to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. In conjunction with these provisions, every station with five or or more full-time employees must file an employment report on or before May 31 of each year, identifying the station's staff by gender, race, color, and/or national origin in each of nine major job categories. See 47 C.F.R. Section 73.3612.

In addition, LPTV stations must file an original and one copy of an Equal Employment Opportunity Report (FCC Form 396) with their renewal application. This EEO form is required of all such licensees even where they do not employ five or more full-time employees or where there are less than 5% minorities in the labor force (however, in such cases you need only complete the first 2 pages of the EEO form).

Question 5(a). The provisions of 47 C.F.R. Section 74.1232(d) provide that an authorization for an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station (*i.e.*, other area FM translator) will not be granted to the licensee of a commercial FM radio broadcast station, or to any person or entity having any interest or connection with a primary FM station. For the purposes of this rule, interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates.

Question 5(b). The provisions of 47 C.F.R. Section 74.1232(e) provide that an authorization for an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station (*i.e.*, other area FM translator) shall not receive any support, before, during or after construction, either directly or indirectly, from the commercial primary FM radio broadcast station, or from any person or entity having any interest or connection with the primary FM station. For the purposes of this rule, interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates.

Section V—Question-by-Question Guidelines

This section must be completed and submitted by all applicants regardless of the service of the station for which renewal is being sought.

The first three questions of this Section are intended to assure that the applicant has attached and included with its application all Sections of this form that pertain to the particular station for which a license renewal is sought.

Certification. As indicated above, responses to the questions set forth in FCC Form 303–S constitute representations upon which the Commission relies in considering whether renewal of the subject license would be in the public interest. Upon completion of the application form and the attached exhibits, the certification must be dated and signed.

The original copy of FCC Form 303–S must be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or absence from the United States. The attorney shall, in the event he/she signs for the applicant, separately set forth the reason why the application is not signed by the applicant. See 47 C.F.R. Section 73.3513. Original copies of applications bearing signatures of unauthorized persons or photo or other reproduced copies of signatures are not acceptable.

FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in the application to determine if the benefit requested is consistent with the public interest. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authorization.

Public reporting burden for this collection of information is estimated to vary from 1 hour to 4 hours and 30 minutes per response, with an average of 1 hour and 2 minutes per

response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Records Management Division, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Paperwork Reduction Project (3060–0110), Washington, DC 20503.

The foregoing notice is required by the Privacy Act of 1974, P.L. 93–579, December 31, 1974, 5 U.S.C. 552a(e)(3), and the Paperwork Reduction Act of 1980, P.L. 96–511, December 11, 1980, 44 U.S.C. 3507.

BILLING CODE 6712-01-M

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-0110
Expires xx/xx/xx

FOR FCC USE ONLY	

FCC 303-S
APPLICATION FOR RENEWAL OF LICENSE FOR AM, FM, TV, TRANSLATOR OR LPTV STATION

FOR COMMISSION USE ONLY
FILE NO.

AM, FM and TV APPLICANTS MUST COMPLETE AND SUBMIT SECTIONS I, II, III AND V ONLY.

FM TRANSLATOR, TV TRANSLATOR and LPTV APPLICANTS MUST COMPLETE AND SUBMIT SECTIONS I, II, IV AND V ONLY.

IF APPLICATION IS FOR RENEWAL OF LICENSES FOR BOTH A PRIMARY STATION and A CO-OWNED TRANSLATOR WHICH REBROADCASTS THE PRIMARY STATION'S SIGNAL, APPLICANT MUST COMPLETE AND SUBMIT SECTIONS I, II, III, IV AND V.

SECTION I (FEE INFORMATION) - TO BE COMPLETED BY ALL APPLICANTS

1. PAYOR NAME (Last, First, Middle Initial)

MAILING ADDRESS (Line 1) (Maximum 35 characters)

MAILING ADDRESS (Line 2) (Maximum 35 characters)

CITY	STATE OR COUNTRY (if foreign address)	ZIP CODE
TELEPHONE NUMBER (include area code)	CALL LETTERS	OTHER FCC IDENTIFIER (IF APPLICABLE)

2. A. Is a fee submitted with this application? ☐ Yes ☐ No

B. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1112):

☐ Governmental Entity ☐ Noncommercial educational licensee ☐ Other (Please explain):

C. If Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(1)			$	

To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

	(A)	(B)	(C)	FOR FCC USE ONLY
(2)			$	

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) AND (2), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.	TOTAL AMOUNT REMITTED WITH THIS APPLICATION $	FOR FCC USE ONLY

SECTION II - TO BE COMPLETED BY ALL APPLICANTS

1. NAME OF LICENSEE OF AM, FM OR TV STATION	NAME OF LICENSEE OF FM OR TV TRANSLATOR OR LOW POWER TV STATION	
MAILING ADDRESS		
CITY	STATE	ZIP CODE

2. This application is for: (a) ☐ Commercial ☐ Noncommercial

☐ AM ☐ FM ☐ TV

Call Letters	Community of License	
	City	State

(b) ☐ FM Translator ☐ TV Translator ☐ Low Power TV

Call Letters	Area Licensed to Serve	
	City	State

Call Letters	Area Licensed to Serve	
	City	State

3. Attach as an Exhibit an identification of any FM booster or TV booster station for which renewal of license is also requested.

Exhibit No.

4. Is the applicant in compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments?

☐ Yes ☐ No

If No, attach as an Exhibit an explanation.

Exhibit No.

5. Since the filing of the applicant's last renewal application or any other application for the subject station(s), has an adverse finding been made or final action been taken by any court or administrative body with respect to the applicant or parties to the application in a civil or criminal proceeding, brought under the provisions of any law relating to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☐ No

If the answer is Yes, attach as an Exhibit a full disclosure concerning the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c), the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing; and (ii) the disposition of the previously reported matter.

Exhibit No.

6. Would a Commission grant of this application come within 47 C.F.R. Section 1.1307, such that it may have a significant environmental impact, including exposure of workers or the general public to levels of RF radiation exceeding identified health and safety guidelines issued by the American National Standards Institute?

☐ Yes ☐ No

NOTE: Licensees of FM translator stations transmitting with an effective radiated power (ERP) of 100 watts or less are not subject to the RF radiation requirments of 47 C.F.R. Section 1.1307(b).

If Yes, attach as an Exhibit an Environmental Assessment, as required by 47 C.F.R. Section 1.1311.

Exhibit No.

If No, explain briefly why not.

SECTION III: TO BE COMPLETED BY COMMERCIAL AND NONCOMMERCIAL AM, FM and TV APPLICANTS ONLY

1. Have the following reports been filed with the Commission:

(a) The Broadcast Station Annual Employment Reports (FCC Form 395-B), as required by 47 C.F.R. Section 73.3612? ☐ Yes ☐ No

If No, attach as an Exhibit an explanation. Exhibit No.

(b) The applicant's Ownership Report (FCC Form 323 or 323-E), as required by 47 C.F.R. Section 73.3615? ☐ Yes ☐ No

If No, give the following information:

Date last ownership report was filed: _____

Call lettters of station for which it was filed: _____

2. Has the applicant placed in its public inspection file at the appropriate times the documentation required by 47 C.F.R. Section 73.3726 and 73.3527? ☐ Yes ☐ No

If No, attach as an Exhibit a complete statement of explanation. Exhibit No.

3. FOR COMMERCIAL AM, FM AND TV APPLICANTS ONLY:

Is the station currently on the air? ☐ Yes ☐ No

If No, attach as an Exhibit a statement of explanation, including the steps the applicant intends to take to restore service to the public. Exhibit No.

4. FOR COMMERCIAL TV APPLICANTS ONLY:

(a) Attach as an Exhibit a summary of the applicant's programming response, nonbroadcast efforts and support for other stations' programming directed to the educational and informational needs of children 16 years old and under, and reflecting the most significant programming related to such needs which the licensee has aired, as described in 47 C.F.R. Section 73.3526(a)(8)(iii). Exhibit No.

(b) For the period of time covered by this report, has the applicant complied with the limits on commercial matter as set forth in 47 C.F.R. Section 73.670? (The limits are no more than 12 minutes of commercial matter per hour on weekdays, and no more than 10.5 minutes of commercial matter per hour during children's programming on weekends. The limits also apply pro rata to children's programs which are 5 minutes or more and which are not part of a longer block of children's programming.) ☐ Yes ☐ No

(c) If No, submit as an Exhibit a list of each segment of programming 5 minutes or more in duration designed for children 12 years old and under and broadcast during the license period which contained commercial matter in excess of the limits. For each programming segment so listed, indicate the length of the segment, the amount of commercial matter contained therein, and an explanation of why the limits were exceeded. Exhibit No.

SECTION IV: TO BE COMPLETED BY FM TRANSLATOR, TV TRANSLATOR and LPTV APPLICANTS ONLY

1. Is the applicant's station currently operating and rebroadcasting the signal of an FM, TV or LPTV station? ☐ Yes ☐ No

   If Yes, identify the station being rebroadcast:

Call Sign	Channel No.	City of License/Area Served

   If No, attach as an Exhibit a statement of explanation, including the steps the applicant intends to take to resume operations. Exhibit No.

2. Is the station being rebroadcast licensed to either the applicant or a commonly controlled entity? ☐ Yes ☐ No

   If No, has the required retransmission consent been obtained? ☐ Yes ☐ No

   If No, attach as an Exhibit an explanation. Exhibit No.

3. Is the station being rebroadcast the same station as previously notified? ☐ Yes ☐ No

   If No, attach as an Exhibit an explanation, including an identification of the station that was previously rebroadcast. Exhibit No.

4. FOR LOW POWER TV APPLICANTS ONLY:

   Has the Broadcast Station Annual Employment Reports (FCC Form 395-B) been filed with the Commission as required by 47 C.F.R. Section 73.3612? ☐ Yes ☐ No

   If No, attach as an Exhibit an explanation. Exhibit No.

5. FOR FM TRANSLATOR APPLICANTS ONLY:

   (a) Is the applicant in compliance with 47 C.F.R. Section 74.1232(d) which prohibits the common ownership of a commercial primary station and an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station being rebroadcast? This restriction also applies to any person or entity having any interest in, or any connection with, the primary FM station. ☐ Yes ☐ No

   If No, attach as an Exhibit an explanation. Exhibit No.

   (b) Is the applicant in compliance with 47 C.F.R. Section 74.1232(e) which prohibits an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station being rebroadcast from receiving any support (except for specified technical assistance), before, during or after construction, directly or indirectly, from the primary station or any person or entity having any interest in, or any connection with, the primary station? ☐ Yes ☐ No

   If No, attach as an Exhibit an explanation. Exhibit No.

SECTION V: TO BE COMPLETED BY ALL APPLICANTS

FOR AM, FM OR TV APPLICANTS ONLY: Applicant has attached Sections I, II, III, and V. ☐ Yes ☐ No

FOR FM TRANSLATOR, TV TRANSLATOR OR LPTV APPLICANTS ONLY: Applicant has attached Sections I, II, IV and V. ☐ Yes ☐ No

FOR CO-OWNED TRANSLATOR AND PRIMARY STATION APPLICANTS ONLY: Applicant has attached Sections I, II, III, IV and V. ☐ Yes ☐ No

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATION

1. By checking Yes, the applicant certifies, that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b). ☐ Yes ☐ No

2. I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name	Signature
Title	Date

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FOREFITURE (U.S. CODE, TITLE 47, SECTION 503))

[FR Doc. 94-28768 Filed 12-6-94; 8:45 am]
BILLING CODE 6712-01-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 941107–4307; I.D. 040494E]

Taking and Importing of Marine Mammals; Yellowfin Tuna Imports

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

ACTION: Final rule.

SUMMARY: NMFS is amending the regulations governing "intermediary nation" embargoes under the Marine Mammal Protection Act (MMPA) by removing the regulatory definition of "intermediary nation," which was inconsistent with a new statutory definition and by incorporating the language of the statutory definition into the applicable regulatory text. This amendment is necessary to bring the regulations into conformance with a recent amendment to the MMPA.

EFFECTIVE DATE: December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, Office of Protected Resources (F/PR2), NMFS, 301–713–2055.

SUPPLEMENTARY INFORMATION:

Background

The MMPA requires the Secretary to prohibit the importation into the United States of any fish harvested with commercial fishing technology that results in the incidental kill of ocean mammals in excess of U.S. standards. In the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, the MMPA prohibits the importation directly from harvesting nations that do not have an affirmative finding from NMFS that they have a comparable marine mammal protection program and mortality rate, as well as indirectly through intermediary nations. The MMPA defines an "intermediary nation" as:

> a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B). (Pub. L. 102–582, section 401(a)).

Prior to the enactment of Public Law 102–582, which added the definition of "intermediary nation" to the MMPA, NMFS had promulgated a regulatory definition of the term in § 216.3. However, that regulatory definition does not conform to the new statutory definition and, by this rule, is removed. The language of the statutory definition is incorporated by this rule into the applicable regulatory text in § 216.24(e)(5)(xiv).

In addition, this rule relocates to § 216.24(e)(5)(xiv) provisions pertaining to reasonable certification and proof, transhipments, and revocation of intermediary nation findings, which were contained in the definition removed from § 216.3, but which still remain applicable.

Classification

This rule amends an existing regulation, without prescribing law or policy, in order to conform the definition of an "intermediary nation" to that contained in a statutory enactment. The Assistant Administrator finds under section 553(b)(B) of the Administrative Procedure Act (APA) that good cause exists to waive prior notice and opportunity for public comment on this rule in that they would serve no useful purpose. Further, in that this rule merely incorporates a statutory definition already in effect, good cause exists under section 553(d)(3) of the APA to waive the 30-day delay in effectiveness.

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: December 1, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

§ 216.3 [Amended]

2. § 216.3, the definition of "Intermediary nation" is removed.

3. In § 216.24, paragraph (e)(5)(xiv) is revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) * * *

(5) * * *

(xiv) *Intermediary nation.* Any yellowfin tuna or yellowfin tuna products in the classifications listed in paragraph (e)(2)(i) of this section, from any intermediary nation, as that term is defined in section 3 of the MMPA, may not be imported into the United States unless the Assistant Administrator determines and publishes in the **Federal Register** that the intermediary nation has provided reasonable proof and has certified to the United States that it has not imported, in the preceding 6 months, yellowfin tuna or yellowfin tuna products that are subject to a ban on direct importation into the United States under section 101(a)(2)(B) of the MMPA. A prohibition on imports under this paragraph may be lifted by the Assistant Administrator upon a determination announced in the **Federal Register**, based upon new information supplied by the government of the intermediary nation, that the nation has not imported, in the preceding 6 months, yellowfin tuna or yellowfin tuna products subject to a ban on direct imports under section 101(a)(2)(B) of the MMPA. Shipments of yellowfin tuna or yellowfin tuna products through a nation on a through bill of lading or in another manner that does not enter the shipments into that nation as an importation do not make that nation an intermediary nation. The Assistant Administrator shall act on any request to review decisions under this paragraph (e)(5)(xiv) that are accompanied by specific and detailed supporting information or documentation, within 30 days of receipt of such request. For purposes of this paragraph (e)(5)(xiv), certification and reasonable proof means the submission by a responsible government official from the nation of a document reflecting the nation's customs records for the preceding 6 months, together with a certificate attesting that the document is accurate.

* * * * *

[FR Doc. 94–30081 Filed 12–06–94; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 675

[Docket No. 931100–4043; I.D. 112394A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in the Bering Sea (BS) subarea of the Bering Sea and Aleutian Islands management area (BSAI) by vessels catching pollock for processing by the offshore component. This action is necessary to fully utilize the allowance of the total allowable catch (TAC) of pollock for the offshore component in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), December 5, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fishery for pollock in the BS by vessels catching pollock for processing by the offshore component was closed on September 24, 1994, in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (59 FR 49032, September 26, 1994). NMFS has determined that as of November 12, 1994, 18,550 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the allowance of the TAC of pollock allocated to the offshore component in the BS has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock in the BS for vessels catching pollock for processing by the offshore component effective at 12 noon, A.l.t., December 5, 1994, until 12 midnight, A.l.t., December 31, 1994.

All other closures remain in full force and effect.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 2, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–30076 Filed 12–2–94; 3:11 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 234
Wednesday, December 7, 1994

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 316

RIN 3206–AF56

Temporary Schedule C Positions

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations which permit agencies to establish temporary Schedule C positions in order to assist a department or agency head during the period immediately following a change in presidential administration, when a new department or agency head has entered on duty, or when a new department or agency is created. Agencies currently differentiate between identical temporary and new temporary Schedule C positions. They are also subject to an overall limit of new positions they may establish, which was set over 10 years ago. To simplify the Schedule C appointment process and respond to agency needs, OPM proposes to merge the two temporary Schedule C authorities into a single temporary appointing authority, and to adjust agencies' position quota to a more realistic level. OPM is also codifying a requirement in law which deals with the detailing of Schedule C incumbents to the White House.

DATES: Comments must be received on or before February 6, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole on 202–606–0950 (FAX: 202–606–0390.

SUPPLEMENTARY INFORMATION: Currently, 5 CFR 213.3302 authorizes agencies to establish, without prior OPM approval, temporary Schedule C positions in order to facilitate the orderly transition of duties during a Presidential transition, changes in department or agency heads, or changes resulting from the creation of a new department or agency. These temporary positions may be either (1) identical to existing Schedule C positions (ITC's) if intent to vacate these positions has been put in writing by management or the present incumbent(s), or (2) new temporary Schedule C positions (NTC's) when it has been determined that the department or agency heads' needs cannot be met through the establishment of a position identical to an existing Schedule C position. Individual appointments may be made for up to 120 days, with one extension of an additional 120 days. It has been OPM policy to permit agencies to make new ITC/NTC appointments up to a year after a Presidential transition or the agency head comes on board.

In order to maintain a reasonable rate of temporary Schedule C positions within Government, every agency has a quota of NTC positions it may establish. Current regulations set the limit on the number of NTC positions established by an agency not to exceed 25 percent of the total number of permanent Schedule C positions authorized for that agency as of March 31, 1980.

The regulations governing temporary Schedule C appointments have been in effect since 1981 and no longer meet agencies' needs. In addition to general confusion over the distinction between the two types of temporary Schedule C appointments, some agencies are finding it increasingly difficult to live within a NTC quota that is based on the number of Schedule C positions that existed over 10 years ago. During 1993, OPM granted several exceptions to individual agency NTC quotas, by way of a variation under section 5.1 of civil service rule V, to meet agencies' needs. To facilitate the appointment process and alleviate processing delays, OPM proposes the following changes:

New Temporary Authority

The ITC and NTC authorities would be replaced by a single temporary transitional Schedule C (TTC) authority to assist agencies with their staffing needs during a Presidential transition, changes in agency heads, or at the time a new agency is created. This new authority will incorporate established policy in effect for ITC and NTC appointments, such as the time limits for making new appointments (within 1 year after the changeover) and the length of individual appointments (up to 120 days with one 120-day extension). No prior OPM approval would be required to make appointments, but agencies would be subject to an overall limit on the number of positions they could fill. Agencies would also have to notify OPM within 5 working days when a position has been encumbered, and within 3 working days when it has been vacated.

Agency Quotas

In order to maintain a reasonable number of temporary Schedule C positions, the number of temporary transitional Schedule C positions established by an agency could not exceed either 50 percent of the highest number of permanent Schedule C positions filled by that agency at any time over the previous 5 years, or three positions, whichever is higher. This would create a fluctuating quota of positions directly related to the agency's Schedule C activity.

Miscellaneous

Since FY 91, the Treasury, Postal Service and General Government Appropriations Act has required agency heads to certify to OPM, when requesting Schedule C exception, that the agency's Schedule C position was not created solely or primarily for the purpose of detailing the incumbent to the White House. With the sunset of the Federal Personnel Manual, we are incorporating this provision of law into the Schedule C regulations. The proposed regulations also include editorial changes to eliminate an obsolete reference to Schedule C delegation agreements which have not existed since 1981, and to renumber and change the order of existing paragraphs.

The proposed regulations also contain a conforming amendment to part 316, section 316.403, which deals with provisional appointments, to change the terminology of ITC and NTC appointments to temporary transitional.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small business, small

organizational units, and small governmental jurisdictions) because they apply only to Federal employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

5 CFR Part 316

Government employees.

Office of Personnel Management.

James B. King

Director.

Accordingly, OPM proposes to amend 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; section 213.101 also issued under 5 U.S.C. 2103; section 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185.

2. Section 213.3301 is revised and section 213.3301b is removed to read as follows:

§ 213.3301 Positions of a confidential or policy-determining nature.

(a) Upon specific authorization by OPM, agencies may make appointments under this section to positions which are policy-determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials. Positions filled under this authority are excepted from the competitive service and constitute Schedule C. Each position will be assigned a number from 213.3302 to 213.3999, or other appropriate number, to be used by the agency in recording appointments made under that authorization.

(b) When requesting Schedule C exception, agencies must submit to OPM a statement signed by the agency head certifying that the position was not created solely or primarily for the purpose of detailing the incumbent to the White House.

(c) The exception from the competitive service for each position listed in Schedule C by OPM is revoked immediately upon the position becoming vacant. An agency shall notify OPM within 3 working days after a Schedule C position has been vacated.

3. Section 213.3302 is revised to read as follows:

§ 213.3302 Temporary transitional Schedule C positions.

(a) An agency may establish temporary transitional Schedule C positions necessary to assist a department or agency head during the 1-year period immediately following a change in presidential administration, when a new department or agency head has entered on duty, or when a new department or agency is created. These positions may be established only to meet legitimate needs of the agency in carrying out its mission during the period of transition associated with such changeovers. They must be of a confidential or policy-determining character and are subject to instructions issued by OPM.

(b) The number of temporary transitional Schedule C positions established by an agency cannot exceed either 50 percent of the highest number of permanent Schedule C positions filled by that agency at any time over the previous 5 years, or three positions, whichever is higher. In the event a new department or agency is created, the number of temporary transitional positions should be reasonable in light of the size and program responsibility of that department or agency.

(c) Individual appointments under this authority may be made for 120 days, with one extension of an additional 120 days. They may be deemed provisional appointments for purpose of the regulations set out in parts 351, 831, 842, 870, and 890 of this chapter if they meet the criteria set out in §§ 316.401 and 316.403 of this chapter.

(d) An agency shall notify OPM within 5 working days after a temporary transitional Schedule C position has been encumbered, and within 3 working days when it has been vacated. The agency must also submit to OPM a statement signed by the agency head certifying that the position was not created solely or primarily for the purpose of detailing the incumbent to the White House.

PART 316—TEMPORARY AND TERM EMPLOYMENT

4. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, and E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); section 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; section 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014 and E.O. 12362, as revised by E.O. 12585 and E.O. 12721.

5. In section 316.403, paragraph (b)(3) is revised to read as follows:

§ 316.403 Designation of provisional appointments.

* * * * *

(b) * * *

(3) Temporary transitional Schedule C appointments made under § 213.3302 of this chapter, when the appointees are to be converted to nontemporary Schedule C appointments upon OPM approval and completion of necessary clearances;

* * * * *

[FR Doc. 94–30014 Filed 12–6–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–159–AD]

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100 and –200 series airplanes. This proposal would require various inspections for cracks in the outboard chord of the frame at Body Station (BS) 727 and in the outboard chord of Stringer 18A; and repair or replacement of cracked parts. This proposal is prompted by reports of fatigue cracks in those outboard chords. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the outboard chords, and subsequent rapid decompression of the airplane.

DATES: Comments must be received by February 3, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–ANM–159–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from

Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2779; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–159–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–159–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of cracking on Boeing Model 737–100 and –200 series airplanes in the outboard chord of the frame at Body Station (BS) 727 where Stringer 18A is attached. There also have been reports of cracking in the outboard chord of Stringer 18A. These cracks were found on eight airplanes that had accumulated between 39,000 and 54,100 flight hours, and between 56,200 and 73,200 flight cycles. The cracks have been determined to be caused by fatigue that was initiated by fretting of adjacent parts. Fatigue cracks in the chords, if not detected and corrected in a timely manner, could result in reduced structural integrity of the structure, and subsequent rapid decompression of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994, which describes procedures for the following repetitive inspections:

1. Close visual inspections to detect cracking of the edge of the forward flange of the outboard chord of the frame at BS 727;
2. High frequency eddy current (HFEC) inspections to detect cracking of the fastener holes in the outboard chord of the frame at BS 727;
3. Pulse echo shear wave (PESW) inspections to detect cracking in the area of the two forward lower fastener holes in the outboard chord where Stringer 18A is attached; and
4. HFEC inspections to detect cracking of the outboard surface of the outboard chord of Stringer 18A at Station 727 and of the surface around the heads of two fasteners.

The alert service bulletin also describes procedures for either the installation of a time-limited repair or the replacement of the chords, if any crack is found in the outboard chord of the frame at BS 727. (The alert service bulletin references Boeing Service Bulletin 737–53–1088 as an additional source of service information for replacement of the outboard chords.) In addition, the alert service bulletin describes procedures for installation of a preventative modification, which, when accomplished, eliminates the need for repetitive inspections.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require various inspections for cracks in the outboard chord of the frame at BS 727 and in the outboard chord of Stringer 18A; and repair or replacement of cracked parts. The proposed AD would also provide for an optional terminating action for the required inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. Under these circumstances, at least one operator appears to have incorrectly assumed that its airplane was not subject to an AD. On the contrary, all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

There are approximately 999 Boeing Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 296 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish each of the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the inspection requirements of this proposed AD on U.S. operators is estimated to be $71,040, or $240 per airplane, per inspection cycle.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 50 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,680 per airplane. Based on these figures, the total cost impact of this optional terminating action is estimated to be $6,680 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Docket 94–NM–159–AD.

Applicability: Model 737–100 and –200 series airplanes; line numbers 1 through 999, inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (h) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the outboard chords, and subsequent rapid decompression of the airplane, accomplish the following:

(a) For airplanes on which the upper outboard chord has been replaced in accordance with Boeing Service Bulletin 737–53–1088: Prior to the accumulation of 30,000 total flight cycles since replacement of the upper outboard chord, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform close visual, pulse echo shear wave (PESW), and high frequency eddy current (HFEC) inspections to detect cracks in the outboard chord of the frame at Body Station (BS) 727 and in the outboard chord of Stringer 18A , in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994.

(b) Repeat the inspections required by paragraph (a) of this AD as follows, until the optional terminating action described in paragraph (g) of this AD is accomplished:

(1) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 27,000 or more flight cycles, but fewer than 50,000 flight cycles, since the replacement of the outboard chord: Perform the next inspection within 15,000 flight cycles. Repeat the inspection thereafter at intervals not to exceed 15,000 flight cycles until the airplane has accumulated 50,000 or more flight cycles since the replacement of the outboard chord; then perform the inspections required by paragraph (b)(2) of this AD.

(2) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 50,000 or more flight cycles, but fewer than 60,000 flight cycles, since the replacement of the outboard chord: Perform the next inspection within 7,500 flight cycles. Repeat the inspection thereafter at intervals not to exceed 7,500 flight cycles until the airplane has accumulated 60,000 or more flight cycles since the replacement of the outboard chord; then perform the inspections required by paragraph (b)(3) of this AD.

(3) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 60,000 or more flight cycles, but fewer than 70,000 flight cycles, since the replacement of the outboard chord: Perform the next inspection within 5,000 flight cycles. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles until the airplane has accumulated 70,000 or more flight cycles since the replacement of the outboard chord; then perform the inspections required by paragraph (b)(4) of this AD.

(4) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 70,000 or more flight cycles since replacement of the outboard chord: Perform the next inspection within 3,000 flight cycles. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

(c) For airplanes on which the outboard chord has not been replaced or on which only the lower outboard chord has been replaced in accordance with Boeing Service Bulletin: 737–53–1088: Perform close visual, pulse echo shear wave (PESW), and high frequency eddy current (HFEC) inspections to detect cracks in the outboard chord of the frame at BS 727 and in the outboard chord of Stringer 18A, in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994. Perform these inspections initially at the time specified in paragraph (c)(1), (c)(2), (c)(3), or (c)(4), as applicable. Repeat these inspections thereafter at the intervals specified in paragraph (d) of this AD.

(1) For airplanes that have accumulated 27,000 or more total flight cycles, but fewer than 50,000 total flight cycles, as of the effective date of this AD: Inspect prior to the accumulation of 4,500 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated 50,000 or more total flight cycles, but fewer than 60,000 total flight cycles, as of the effective date of this AD: Inspect prior to the accumulation of 2,500 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 60,000 or more total flight cycles, but fewer than 70,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 1,500 flight cycles after the effective date of this AD.

(4) For airplanes that have accumulated 70,000 or more total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 500 flight cycles or within 90 days after the effective date of this AD, whichever occurs first.

(d) Repeat the inspections required by paragraph (c) of this AD as follows, until the optional terminating action described in paragraph (g) of this AD is accomplished:

(1) If, at the time of the most recent inspection required by paragraph (c) or (d) of this AD, the airplane has accumulated 27,000 or more total flight cycles, but fewer than 50,000 total flight cycles: Perform the next inspection within 15,000 flight cycles. Repeat the inspection thereafter at intervals not to exceed 15,000 flight cycles until the airplane has accumulated 50,000 or more total flight cycles; then perform the inspections required by paragraph (d)(2) of this AD.

(2) If, at the time of the most recent inspection required by paragraph (c) or (d) of this AD, the airplane had accumulated 50,000 or more total flight cycles, but fewer than 60,000 total flight cycles: Perform the next inspection within 7,500 flight cycles. Repeat the inspection thereafter at intervals not to exceed 7,500 flight cycles until the airplane has accumulated 60,000 or more total flight cycles; then perform the inspections required by paragraph (d)(3) of this AD.

(3) If, at the time of the most recent inspection required by paragraph (c) or (d) of this AD, the airplane had accumulated 60,000 or more total flight cycles, but fewer than 70,000 total flight cycles: Perform the next inspection within 5,000 flight cycles. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles until the airplane has accumulated 70,000 or more total flight cycles; then perform the inspections required by paragraph (b)(4) of this AD.

(4) If, at the time of the most recent inspection required by paragraph (c) or (d) of this AD, the airplane had accumulated 70,000 or more total flight cycles: Perform the next inspection within 3,000 flight cycles. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

(e) If any crack is found in the outboard chord of Stringer 18A during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

(f) If any crack is found in the outboard chord of the frame at BS 727 during any inspection required by this AD, accomplish paragraph (f)(1) or (f)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994.

(1) For any crack that extends from the forward edge of the chord or from the forward fastener hole, but that does not extend past the second fastener hole, accomplish either paragraph (f)(1)(i) or (f)(1)(ii) of this AD. Thereafter, perform initial and repetitive inspections in accordance with paragraphs (a) and (b) of this AD.

(i) Prior to further flight, install the time limited repair. Prior to the accumulation of 4,500 flight cycles or within 18 months, after accomplishing the time-limited repair, whichever occurs first, replace the outboard chord. Or

(ii) Prior to further flight, replace the outboard chord.

Note 4: Boeing Alert Service Bulletin 737–53A1166 references Boeing Service Bulletin 737–53–1088 as an additional source of service information for procedures to replace the chord.

(2) For any crack that extends from the forward edge of the chord, or from the forward fastener hole, and that extends past the second fastener hole, prior to further flight, replace the outboard chord in accordance with the alert service bulletin. Thereafter, perform initial and repetitive inspections in accordance with paragraphs (a) and (b) of this AD.

(g) Accomplishment of the following actions in accordance with Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994, constitutes terminating actions for the requirements of this AD:

(1) For airplanes on which no crack is found: Install the preventative modification in accordance with the alert service bulletin.

(2) For airplanes on which any crack is found: Prior to further flight, replace the outboard chords and install the preventative modification in accordance with the alert service bulletin.

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

Issued in Renton, Washington, on December 1, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–30086 Filed 12–6–94; 8:45 am]

BILLING CODE 4910–13–U

Coast Guard

33 CFR Part 117

[CGD08–94–033]

RIN 2115–AE47

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the vertical lift span drawbridge across the Gulf Intracoastal Waterway, mile 35.6, at Larose, Lafourche Parish, Louisiana. The proposed regulation would require that from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw of the bridge would remain closed to navigation for passage of vehicular traffic during peak traffic periods. At all other times the draw would open on signal for passage of vessels. Presently, the draw is required to open on signal at all times. This action would relieve traffic congestion on the bridge during these periods, and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before February 6, 1995.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or may be delivered to Room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Background and Purpose

The Louisiana Department of Transportation and Development has requested the new regulation because vehicular traffic crossing the bridge during the proposed closure periods has increased dramatically during recent years and severe congestion occurs during peak traffic hours. The proposed regulation would allow for the uninterrupted flow of vehicular traffic, while still providing for the reasonable needs of navigation.

Discussion of Proposed Rules

The Louisiana State Route 1 vertical lift span bridge across the Gulf Intracoastal Waterway, mile 35.6, at Larose, Lafourche Parish, Louisiana, has 35 feet vertical clearance above mean high water in the closed to navigation position and 73 feet vertical clearance above mean high water in the open to navigation position. The horizontal clearance is 125 feet. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, oil field work boats and recreational craft. Data provided by LDOTD show that from

June 1993 through May 1994, the number of vessels that passed the bridge during the proposed closure period from 7 a.m. to 8:30 a.m. average 1.3 vessels per day. The number of vessels that passed the bridge during the proposed 4:30 p.m. to 6 p.m. closure averaged 1.4 vessels per day.

Data show that approximately 658 vehicles cross the bridge during the proposed 7 a.m. to 8:30 a.m. closure period and approximately 1,247 vehicles cross the bridge during the proposed 4:30 p.m. to 6 p.m. closure period.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Since the proposed rule also considers the needs of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.451 is amended by revising paragraph (c) to read as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(c) The draw of the SR1 bridge, mile 35.6, at Larose, shall open on signal; except that, from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels.

* * * * *

Dated: November 21, 1994.

R. C. North,

Read Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 94–30057 Filed 12–6–95: 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI48–01–6711A; FRL–5112–7]

Approval and Promulgation of Implementation Plans; Rhinelander, Wisconsin Sulfur Dioxide Attainment and Maintenance Plan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve the State of Wisconsin's revision to its State Implementation Plan (SIP) for the Rhinelander, Wisconsin sulfur dioxide (SO_2) nonattainment area. This State revision request, dated October 21, 1994 was submitted to satisfy the requirements of section 110 and part D of the Clean Air Act and regulates certain sources of SO_2 in Rhinelander, Wisconsin. In the final rules section of this **Federal Register**, USEPA is approving the State's request as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated and the direct final rule will become effective. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received by January 6, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos/Sheila Breen, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Christos Panos at (312) 353–8328 or Sheila Breen at (312) 886–6053, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 14, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–29882 Filed 12–6–94; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 59, No. 234
Wednesday, December 7, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Columbia River Basin Ecosystem Management Strategy, Northern and Intermountain Regions

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[D–990–05–1610–00–UCRB]

Upper Columbia River Basin Ecosystem Management Strategy, States of Idaho, Montana, Wyoming, Utah, and Nevada

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and conduct planning activity which may amend Forest Service Regional Guides and will amend Forest Service and Bureau of Land Management land use plans.

SUMMARY: The Forest Service and the Bureau of Land Management (BLM) propose to develop a scientifically sound, ecosystem-based strategy for management of the lands under their jurisdiction in the Upper Columbia River Basin (UCRB) in Idaho, Montana, Utah, Nevada, Wyoming, and a small part of Washington that is administered by Region 1 of the Forest Service. This strategy will modify existing land use plans. The modification will include a coordinated ecosystem management strategy for National Forest System and BLM public lands. This strategy will be consistent with the "Framework for Ecosystem Management in the Interior Columbia River Basin" that is being completed by the Scientific Integration Team of the Eastside Ecosystem Management Project. The EIS that will accompany this strategy will use the information from the "Scientific Assessment for Ecosystem Management in the Interior Columbia River Basin" and information received from the public as a basis for issue determination and for evaluating alternative strategies. Additional information may be collected as necessary.

The strategy will be adopted in the form of decisions about desired ranges of future conditions for ecosystems, and related standards and guidelines for management of National Forest System and BLM public lands on all or parts of the UCRB. The EIS will consider alternative strategies for management of National Forest System and BLM-administered lands and their effects in the entire UCRB. At a minimum:

A. The strategy will include direction which will protect and enhance aquatic ecosystems within the range of threatened or endangered anadromous fish through amendments to Forest Plans and Resource Management Plans. This direction will supersede any interim direction resulting from the Environmental Assessment for the Implementation of Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California (commonly referred to as "PACFISH").

B. The strategy also will include other necessary guidance applicable to the Basin as a whole, or to broad subregions within the basin. This guidance will address forest ecosystem health; rangeland ecosystem health; aquatic and riparian ecosystem health; integration of social and economic considerations; population viability; and the long-term sustainability of threatened, endangered, and sensitive species. The guidance also will be developed by examining other issues identified by the public through the scoping process. This guidance will be adopted as amendments to the Forest Service Regional Guides for Regions 1 and 4 and/or amendments to Forest Service and BLM land use plans.

C. The third part of the strategy may identify changes to the ways current plans are implemented or budgets developed, that can improve capability to achieve ecosystem management objectives. The strategy may also help establish priorities for revising forest plans and developing or amending resource management plans. This part of the strategy does not require environmental analysis, but may be addressed within the scope of this EIS.

DATES: Comments concerning the scope of the analysis should be received in writing by 30 days following the date of the last scoping meeting to receive full consideration in the development of alternatives. Dates of those meetings will be published in local and regional newspapers.

ADDRESSES: Send written comments concerning this proposal to Stephen P. Mealey, Project Manager, 304 North 8th St., Room 253, Boise Idaho 83702.

FOR FURTHER INFORMATION CONTACT: Gary Wyke or Cindy Deacon Williams, EIS Team Co-leaders, 304 North 8th St., Room 253, Boise, Idaho 83702, phone (208) 334–1770.

SUPPLEMENTARY INFORMATION: The purpose of this action is to develop and analyze a scientifically sound, ecosystem-based strategy for management of lands administered by the United States Department of Agriculture (USDA) Forest Service and the United States Department of the Interior (USDI) Bureau of Land Management that are in the UCRB in Idaho, Montana, Wyoming, Utah, and Nevada and that portion of Washington administered by the Forest Service's Northern Region. The strategy will focus on ecosystem health, including its forest, rangeland, and aquatic/riparian, landscape, and social/economic components, with emphasis on population viability and the sustainability of threatened, endangered, and sensitive species.

The EIS team will prepare a proposed action that responds to problems described in the statement of purpose and need. Formal scoping meetings will follow the development of the proposed action. The purpose and need statement and proposed action will serve to focus formal scoping meetings by giving the public a better understanding of the agencies' early thoughts about, or initial approximations of, what the UCRB ecosystem strategy might be. The theme of the proposed action will be the restoration of ecological resiliency in forest, rangeland, and aquatic/riparian ecosystems within the UCRB. (Aldo Leopold, in his essay The Land Ethic, defines the health of the land as "the capacity of the land for self-renewal." We speak of ecological resiliency as the capacity of an ecosystem, including its physical, biological and human

components, for self-renewal. We do not imply that all human wants will be satisfied by a resilient ecosystem.) Alternatives to the proposed action will be developed largely in response to public comments on the proposed action in formal scoping meetings.

This EIS will address all BLM lands within the Columbia River Basin east of Oregon and Washington and all National Forest System lands in the Columbia River Basin within the agency's Northern and Intermountain administrative Regions. (This includes National Forest System and BLM public lands in all of Idaho except the southeast corner that drains into the Great Basin. It also includes the portion of the Panhandle National Forest in Washington, that portion of Montana west of the Continental Divide, a small portion of west-central Wyoming, the north-west corner of Utah, and the northeastern corner of Nevada.) The selected alternative may result in amendment to the Forest Service Regional Guides for the Northern and Intermountain Regions and amendment of the land use plans for the Forest Service and Bureau of Land Management as follows:

Forest Service: Boise, Bridger-Teton, Caribou, Challis, Humboldt, Payette, Salmon, Sawtooth, and Targhee National Forests in the Intermountain Region; and Panhandle, Clearwater, Nez Perce, Kootenai, Lolo, Flathead, Helena, Deerlodge, and Bitterroot National Forests in the Northern Region.

Bureau of Land Management: Boise, Burley, Idaho Falls, Salmon, Shoshone, and Coeur d'Alene Districts in Idaho; Butte District in Montana; Rock Springs District in Wyoming; Salt Lake District in Utah; and Elko and Winnemucca Districts in Nevada.

The BLM Challis Resource Area (Salmon District), Bennett Hills Resource Area (Shoshone District), and Owyhee Resource Area (Boise District) now are preparing Resource Management Plans (RMPs) that are expected to incorporate ecosystem management strategies. Similarly, the Targhee National Forest is revising its forest plan, and the Clearwater National Forest expects to revise its forest plan. The schedule for the Clearwater forest plan revision process will be announced at the time a notice of intent for that purpose is published. These five planning efforts will continue. The Challis, Bennett Hills, and Owyhee RMPs are expected to be completed in 1995. The Targhee forest plan revision is expected to be complete in 1996, and the Clearwater forest plan revision is expected to be completed sometime after the completion of the UCRB EIS. To the extent possible, those planning efforts will be coordinated with development of the UCRB ecosystem management strategy. The UCRB EIS may lead to a Record of Decision that amends one or more of those five plans following completion of on-going planning efforts. If the UCRB EIS is completed prior to completion of any of these five on-going efforts, adjustments may be made to on-going efforts to ensure consistency with the UCRB ecosystem management strategy.

BLM lands subject to potential plan amendments through the UCRB effort total approximately 14 million acres in five states. The National Forest System lands subject to potential plan amendment total approximately 31.5 million acres.

Concurrent with this EIS, a basin-wide assessment known as the "Scientific Assessment for Ecosystem Management in the Interior Columbia River Basin" is under development. (The "interior Columbia River Basin" has been defined as the lands in the continental United States tributary to the Columbia River east of the crest of the Cascade Mountain Range.) This Scientific Assessment will cover broad ecosystems, and describe social, economic, and biophysical processes and functions. The natural resources within this broad geographic area have been altered over time by many factors including drought, fire suppression, global climate change, livestock grazing, mining, timber harvest, urbanization, and water uses. The results of the Scientific Assessment will be used, in part, to analyze the effects of past management and present management under current land use plans as a baseline to help determine the need to change management direction, and to determine the effects of different approaches to ecosystem management.

The EIS will analyze a number of alternatives. One will be no action, defined as current land use plan direction without modification of any decision resulting from the Environmental Assessment for the Implementation of Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California (commonly referred to as the "PACFISH" strategy). Another will be current management direction as modified by any decision issued as interim direction resulting from the "PACFISH" environmental assessment. As indicated, further alternatives will be developed in response to issues identified during the public scoping process as defined in the Council on Environmental Quality's National Environmental Policy Act (NEPA) implementing regulations to identify a range of reasonable alternatives.

Issues that are expected to be addressed in detail through the development and analysis of alternatives (in addition to the management of anadromous fish habitat) include ecosystem health and its forest, rangeland, and aquatic/riparian components with emphasis on population viability and long-term sustainability of threatened, endangered, and sensitive species. The use of public lands and resources in the production of goods and services within the context of sustainability will also be examined. The evaluation of these alternatives and others will consider people's expectations for public lands and resources, along with the capability of the ecosystems to provide and sustain these values through time. Information will be used from the basin-wide Scientific Assessment, Tribal governments, state and local governments, other federal agencies, and other appropriate sources.

The direction being developed through this process will serve as an ecosystem management strategy to move from current conditions to more ecologically sustainable and socially desirable conditions, leaving options available for future generations. The strategy will, at least, establish desired ranges of future conditions for broad forest, rangeland, and aquatic/riparian habitat types and inter-related social, economic and landscape systems. Achievement of desired ranges of future conditions by practices and activities developed and implemented at the national forest and BLM district level, will result in restoration of ecosystem health and restoration of ecological processes that maintain ecosystems over time. Ecosystem restoration to, and maintenance within, sustainable ranges by identifying appropriate goals and objectives and management practices, can also help promote viability of associated social and economic systems. The strategy will be based on integration of social values, ecological capabilities, and economic relationships, and will recognize treaty rights reserved by various Native American Tribes on ceded lands and will fulfill United States government trust responsibilities to the Tribes. The strategy will (1) assure habitat condition needed to support species viability within the context of desired ecosystem function and structure; (2) address the needs of species and habitats of concern (currently listed or being considered for listing under the Endangered Species Act or designated as sensitive species by

the Forest Service or BLM); (3) support the needs of dynamic ecosystems that change over time and space; and (4) recognize the role that disturbance mechanisms play in the evolution and maintenance of ecosystems.

Scoping meetings are tentatively planned for Coeur d'Alene, Moscow, Orofino, Grangeville, McCall, Salmon, Challis, Idaho Falls, Pocatello, Twin Falls, Ketchum, and Boise in Idaho; Missoula, Libby, Kalispell, Hamilton, Helena, and Butte, in Montana; Jackson, Wyoming; Salt Lake City, Utah; and Elko, Nevada. Specific dates, times and locations for the meetings will be announced in local newspapers of general distribution.

The Bureau of Land Management and the Forest Service will act as joint lead agencies to prepare the EIS. The two agencies will consult with Tribal Governments and coordinate with state and local governments and other federal agencies. The Fish and Wildlife Service and the National Marine Fisheries Service will be consulted pursuant to the Endangered Species Act.

The responsible officials for National Forest System lands will be the Regional Foresters for the:

—Intermountain Region, Federal Building, 324 25th Street, Ogden, Utah 84401; and
—Northern Region, P.O. Box 7669, Missoula, Montana.

The responsible officials for public lands administered by the Bureau of Land Management will be the State Directors for:

—Idaho, 3380 Americana Terrace, Boise, Idaho 83706;
—Montana, Granite Tower, 222 N. 32nd Street, Billings, Montana 59101;
—Wyoming, P.O. Box 1828, Cheyenne, Wyoming 82003;
—Utah, 324 South State Street, Suite 301, Salt Lake City, Utah 84111; and
—Nevada, P.O. Box 12000, Reno, Nevada 89520.

The draft EIS is expected to be filed with the Environmental Protection Agency in October, 1995, and will be available for public review at that time. A public comment period of 90 days will be provided for the draft EIS.

The UCRB EIS Team (Team) believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs 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 EIS stage but that are not raised until after completion of the final EIS 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 90-day comment period on the draft EIS, so that substantive comments and objections are made available to the Team at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Team in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It also is helpful if comments refer to specific pages or chapters of the draft statement. Comments also may address the adequacy of the draft EIS 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.

It is expected that the final EIS will be filed with the Environmental Protection Agency approximately 6 months after the draft EIS is published. The record of decision for National Forest System Lands will be issued with the final EIS and will be subject to Forest Service appeal regulations (36 CFR 217). The BLM's proposed plan amendment decision will be published with the final EIS and will be subject to BLM protest regulations (43 CFR 1610.5–2). The BLM's record of decision will be published following resolution of any protests.

David F. Jolly,

Regional Forester, Northern Region.

Dale N. Bosworth,

Regional Forester, Intermountain Region.

Alan R. Pierson,

Acting State Director, Idaho.

Larry E. Hamilton,

State Director, Montana.

[FR Doc. 94–30085 Filed 12–6–94; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF AGRICULTURE

Forest Service

Frank Church-River of No Return Wilderness Programmatic Management Plan, Boise, Bitterroot, Nez Perce, Payette, and Salmon-Challis National Forests; Boise, Custer, Idaho, Lemhi and Valley Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis. It will disclose the environmental impacts of proposed actions to develop goals and objectives, describe desired future condition(s), establish indicators and standards, delineate management zones, develop management prescriptions and establish monitoring requirements for the Frank Church-River of No Return Wilderness, an area of 2,361,767 acres in Central Idaho. This Wilderness contains both the Middle Fork and Main Salmon Wild Rivers and the Upper Selway Wild River.

The action will amend the existing Land and Resource Management Plans as part of the Final Environmental Impact Statement. This new management direction will apply to projects implemented after site-specific analysis has been conducted. The coordinated management direction established by the Record of Decision for the Final Environmental Impact Statement will be incorporated into all land and resource management plans within the administrative boundaries of the Frank Church-River of No Return Wilderness.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before December 30, 1994.

ADDRESSES: Send written comments to FC–RONR Wilderness Coordinator, P.O. Box 729, Salmon, ID 83467.

FOR FURTHER INFORMATION CONTACT: Ken Wotring, Wilderness Coordinator, Frank Church-River of No Return Wilderness, 208–756–5131.

SUPPLEMENTARY INFORMATION: This EIS will update the existing Management Plans and the Land and Resource Management (Forest) Plans that govern the Frank Church-River of No Return Wilderness by developing goals and objectives, describing Desired Future Conditions, selecting indicators of wilderness conditions, establishing

standards for these indicators, identifying possible management actions for sites where standards could be or are being exceeded, delineating management zones, developing management prescriptions and establishing monitoring requirements for the Bitterroot, Boise, Nez Perce, Payette and Salmon-Challis National Forests lands within this wilderness area.

Preliminary issues identified to date include:

- What effect will management decisions have on the Wilderness' ecological values and the preservation of natural biodiversity?
- How will exotic plants and animals be managed?
- Will expanding exotic plant and animal populations significantly affect wilderness values?
- Will management actions have an effect on fish habitat, particularly salmon and steelhead trout?
- Will natural fire regimes and fire management practices be affected?
- Will wildlife species and their habitats be impacted by this action?
- How will existing mining claims be affected by this action?
- Will it be possible to establish long term baseline monitoring of the wilderness resource after implementation of this decision?
- How will research be affected by this decision?
- What will be the effects of human waste and litter impacts?
- Will it be possible to minimize user impacts and reduce crowding to ensure a positive wilderness experience?
- How will recreational activities be managed to allow for use while minimizing impacts to the natural resource and wilderness experience?
- How can the Wilderness' cultural and historical values be protected and maintained while at the same time be share with the public?
- How will unique qualities and management policies of the Frank Church-River of No Return Wilderness, such as authorized motorboats on the main Salmon River and established aircraft use, be effected by this decision?
- How can stock use be managed while minimizing impacts to the natural resource and wilderness experience?
- How will the decision affect consistency and uniformity in regulations, cooperation among Ranger Districts and accountability in management?
- How can outfitters and guides be encouraged to perpetuate the wilderness resource and wilderness experience?
- How can the state and private inholders be encouraged to manage their lands in a manner compatible with the surrounding Wilderness?
- How can trails and trailhead facilities be managed to provide access while minimizing impacts to the resource?
- Can river traffic be managed in an equitable manner that minimizes impacts to the river and the river experience?
- What is the appropriate amount, type and level of development and maintenance for adjacent roads and roadside facilities?
- How should aircraft access be managed?
- What is the appropriate level of development and maintenance for airstrips?

The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments on potential issues should be submitted to the Forest Service within 45 days from the date of publication of this Notice in the **Federal Register**. Neutrally facilitated public meetings will be held in Grangeville, McCall, Boise, Pocatello, and Salmon, Idaho, and Hamilton, Montana, on December 5, 6, 7, 8, 9, and 10, 1994, respectively, for the purpose of identifying issues, developing Desired Future Conditions and mapping potential management zones. A response card will be mailed to the persons and organizations on the "Frankly Speaking" mailing list. Similarly facilitated public meetings will be held in Cascade, Idaho Falls, Lewiston, and Nampa, Idaho, and Missoula, Montana, to solicit comments on potential indicators, standards and management prescriptions. Response cards will again be sent to the "Frankly Speaking" mailing list to solicit input on these topics. Agency-sponsored open house meetings will be held at the Forest Headquarters offices of the Bitterroot, Boise, Caribou, Nez Perce, Payette and Salmon-Challis National Forests to gather comments on the Draft Environmental Impact Statement. The date, time and location of all of the above meetings will be published in "The Idaho Statesman" (Boise, Idaho), "The Missoulian" (Missoula, Montana), "The Lewiston Tribune" (Lewiston, Idaho), "The Star News (McCall, Idaho), "The Post Register" (Idaho Falls, Idaho) and "The Recorder-Herald" (Salmon, Idaho).

Preparation of the EIS will include the following steps:

1. Define the purpose of and need for action.
2. Identify potential issues, desired future conditions and management zones.
3. Eliminate issues of minor importance or those that have been covered by previous and relevant environmental analysis.
4. Select issues to be analyzed in depth.
5. Identify prospective indicators, standards and management prescriptions.
7. Identify reasonable alternatives to the proposed action.
8. Describe the affected environment.
9. Identify the potential environmental effects of the alternatives.
10. Select monitoring requirements.

Steps 2, 3, and 4 will be completed through the scoping process.

Steps 5 will consider a range of alternatives developed from the key issues. One of these will be the "No Action" alternative, in which the existing management direction would be maintained. Other alternatives will consider various combinations of indicators, standards, management zones and management prescriptions in response to issues.

Step 8 will describe the physical, biological and social attributes of the area to be affected by this proposal, with special attention to the environmental factors that could be adversely affected.

Step 9 will analyze the environmental effects of each alternative. This analysis will provide the rationale for amending the Land and Resource Management (Forest) Plans and will be consistent with National Forest Management Act requirements. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, management prescription or management zone specific mitigation measures will be identified and the effectiveness of these mitigation measures will be disclosed.

The approximate boundary of the area used for this analysis is the Frank Church-River of No Return Wilderness which includes almost the entire Middle Fork Salmon River drainage, the Main Salmon River drainage from Wheat Creek downstream to the South Fork Salmon River, excluding Little Mallard and Robertson Creeks and that portion of the Main Salmon River downstream from the South Fork Salmon River to Huntz Gulch on the South side of the river, the Big Creek

drainage downstream from Smith Creek, and the South Fork Salmon River downstream from Knob Creek. A total of 2,361,767 acres in four counties (Custer, Idaho, Lemhi and Valley) is included in this Wilderness area. For a map, please refer to the "Frank Church-River of No Return Wilderness (North Half, South Half), available from the USDA, Forest Service, Intermountain Region, Ogden Utah 84401.

The proposed management activities would be administered by the Frank Church-River of No Return Wilderness Headquarters in Lemhi County, Idaho.

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Three specific time periods are identified for the receipt of formal comments on the analysis. The three comment periods are, (1) during the scoping process, (2) during the draft indicators and standards identification and management prescriptions development phase, and (3) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in October 1995. At that time, the EPA will publish an availability notice of the Draft EIS in the Federal Register.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in this proposed action participate at that time. To be most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement of merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that 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 reviewers' positions and contentions. *"Vermont Yankee Nuclear Power Corp.* v. *NRDDC"*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *"City of Angoon* v. *Hodel,"* (9th Circuit,m 1986 and *"Wisconsin Heritages, Inc.* v. *Harris,"* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure 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.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be as specific as possible. Referring to specific pages or chapters of the Draft EIS is most helpful. Comments may also address the adequacy of the Draft EIS or the merits of the alternative 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, 40 CFR 1503.3, in addressing these points.

The final EIS is expected to be released December 1, 1995.

The Lead Forest Supervisory for the Frank Church-River of No Return Wilderness, who is the Responsible Official for the EIS, will then make a decision regarding this proposal after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decision.

Dated: November 15, 1994.

Charles C. Wildes,

Lead Forest Supervisor, FC–RONR Wilderness.

[94–30047–Filed 12–6–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 940680–4300]

RIN 6093–AB29

Approval of Federal Information Processing Standards Publication 192, Application Profile for the Government Information Locator Service (GILS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 192, Application Profile for the Government Information Locator Service (GILS).

SUMMARY: On July 5, 1994, notice was published in the **Federal Register** (59 FR 34414) that a Federal Information Processing Standard for Application Profile for the Government Information Locator Service (GILS) was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the standard as a Federal Information Processing Standards Publication, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This standard becomes effective June 30, 1995.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Christian, (703) 648–7245, U.S. Geological Survey, 802 National Center, Reston, VA 22092.

Dated: November 29, 1994.

Samuel Kramer,

Associate Director.

Proposed Federal Information Processing Standards Publication 192

(Date)

Announcing the Standard for Application Profile for the Government Information Locator Service (GILS)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative

Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Application Profile for the Government Information Locator Service (GILS) (FIPS PUB 192).

2. Category of Standard. Software Standard, Information Interchange.

3. Explanation. This standard describes an application profile for the Government Information Locator Service (GILS). This application profile is based primarily on the American National Standard for Information Retrieval Application Service Definition and Protocol Specification for Open Systems Interconnection (ANSI/NISO Z39.50–1992), developed by the National Information Standards Organization (NISO). The Government Information Locator Service (GILS) is a decentralized collection of servers and associated information services that will be used by the public either directly or through intermediaries to find public information throughout the Federal government.

This GILS Profile specifies the use of ANSI/NISO Z39.50–1992 in information service applications and provides specifications for the overall GILS application, including the GILS Core and other aspects of the GILS server operating in the Internet environment. This GILS profile will enable GILS client systems to interconnect and to interoperate with any GILS server. This profile addresses intersystem interactions and information interchange for the GILS, but does not specify user interface requirements, the internal structure of databases that contain GILS Locator Records, or search engine functionality.

GILS servers will support search and retrieval by accepting a search query and returning a result set or diagnostic messages. GILS servers may also support browsing by accepting a well-known search query and returning a list of Locator Records in brief display format.

Some of the information resources pointed to by GILS Locator Records, as well as the GILS server itself, may be available electronically through other communications protocols including the common Internet protocols that facilitate electronic information transfer such as remote login (Telnet), File Transfer Protocol (FTP), and electronic mail. The use of SMTP and MIME protocols or other communications paths is outside the scope of the GILS Profile.

The GILS Profile was developed by a group of industry and government experts in ANSI/NISO Z39.50–1992 implementations, system implementations, and the organization of information. The specifications included in the GILS Profile reflect the consensus of this group based on its work and input from a range of stakeholders.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of the Interior, United States Geological Survey (USGS).

Questions concerning this standard are to be addressed to the Maintenance Agency: GILS Program, United States Geological Survey (USGS), 802 National Center, Reston, VA 22092. Users of this standard who need to be notified of changes that occur prior to the next publication of the standard should complete the Change Request Form provided in this publication and send it to: Standards Processing Coordinator (ADP), Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. The NIST will issue Change Notices on an as-needed basis.

6. Related Documents.

a. Federal Information Resources Management Regulations (FIRMR) subpart 201–20.303, Standards and subpart 201–39–1002, Federal Standards.

b. Office of Management and Budget Bulletin 94–_____, Establishment of Government Information Locator Service.

c. American National Standard for Information Retrieval Application Service Definition and Protocol Specification for Open Systems Interconnection (ANSI/NISO Z39.50–1992).

d. A list of additional references for the Application Profile is contained in section 5, References, of the specifications.

7. Objectives. The objectives of the Application Profile for the GILS are to:

—Enable users to identify, locate, and access or acquire publicly available Federal information resources, including electronic information resources.

—Provide a uniform approach to providing information locator services to the public.

—Enable every agency to establish standards-based network-accessible locator records.

8. Applicability.

a. This standard is recommended for use by Federal agencies in the development and establishment of information locators, i.e., information resources that identify other information resources, describe the information available in those resources, and provide assistance in how to obtain the information.

b. This standard is required for use by Federal agencies in those information locators that are established and maintained as part of the Government Information Locator System (GILS) pursuant to the requirements of OMB Bulletin 94–_____ and other applicable, law, regulation, and policy.

c. The GILS Core requirements of this standard apply to those GILS locator records which:

—Describe information resources maintained by the Federal government,

—Comply with the defined GILS Core Elements;

—Are mutually accessible through interconnected electronic network facilities without charge to the direct user; and

—Are designated by the agency to be part of the Federal government GILS Core, pursuant to OMB Bulletin 94–_____.

9. Specifications. The Application Profile for the Government Information Locator System, (affixed).

10. Implementation. The implementation of this standard involves three areas of consideration: development and acquisition of GILS implementations, validation, and interpretations of the standard.

10.1 Development and Acquisition of GILS Implementations. This standard is effective June 30, 1995.

10.2 Validation. Validation of GILS implementation is not required at this time. Testing for conformance to this standards is at the discretion of the agency. Agencies may select the tests to be administer4ed and the testing organization that administer the tests.

10.3 Interpretation of this standard. Resolution of questions regarding this standard will be provided by NIST. Questions concerning the content and specifications should be addressed to: Director, Computer Systems Laboratory, Attn: FIPS for GILS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–2833.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to Section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required findings(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

12. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the United States Geological Survey (USGS).) When ordering, refer to Federal Information Processing Standards Publication 192 (FIPSPUB192), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 94–29890 Filed 12–6–94; 8:45 am]

BILLING CODE 3510–CN–M

Meeting

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of public meeting.

SUMMARY: National Institute of Standards and Technology announces a meeting of producers of metal reference materials used in the chemical analysis of metals. The purpose of this meeting is to discuss means for achieving traceability to national measurement standards.

DATES: The meeting will be held on December 13, 1994 at 9:00 a.m.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Physics Building, Room A–366, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. William P. Reed, in the NIST Office of Measurement Services, Room B–354 Physics Building, NIST, Gaithersburg, Maryland 20899. Phone 301–975–2011, FAX 301–948–3825.

Dated: December 1, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–30048 Filed 12–6–94; 8:45 am]

BILLING CODE 3510–01–M

National Oceanic and Atmospheric Administration

[I.D. 112194B]

Small Takes of Ringed Seals Incidental to On-Ice Seismic Activity

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

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with section 101(a)(5) of the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that letters of authorization to take ringed seals incidental to on-ice seismic operations in the Beaufort Sea off Alaska were issued on December 1, 1994 to BP Exploration, Western Geophysical, and Schlumberger, all of Anchorage, AK.

DATES: These letters of authorization are effective from December 1, 1994 until December 1, 1995.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and Western Alaska Field Office, NMFS, 701 C Street, Anchorage, AK 99513.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Ron Morris, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made, and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if the Secretary finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of ringed seals incidental to on-ice seismic activities were promulgated on January 13, 1993 (58 FR 4091) and remain in effect until December 31, 1997.

Summary of Requests

NMFS received requests for letters of authorization on the dates specified from: (1) BP Exploration (Alaska) Inc., 900 East Benson Blvd. P.O. Box 196612, Anchorage, AK 99519–6612 (July 15, 1994, revised September 20, 1994); (2) Western Geophysical/ Western Atlas International, Inc. 351 E. International Airport Road, Anchorage, AK 99518–1299 (November 4, 1994); and (3) Schlumberger, 500 W. International Airport Road, Anchorage, AK 99518 (October 31, 1994). All letters request a take by harassment of a small number of ringed seals incidental to on-ice seismic work in the Beaufort Sea, AK.

Issuances of these letters are based on findings that the total takings will have a negligible impact on the ringed seal species or stock and will not have an unmitigable adverse impact on the

availability of this species for subsistence uses.

Dated: December 1, 1994.

P.A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–30080 Filed 12–6–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 113094A]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Demersal Species Committee (with Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder Board) will hold public meetings on December 20–22, 1994, at the Ocean Place Hilton, One Ocean Boulevard, Long Branch, NJ 07740–6700; telephone: (908) 571–4000.

On December 20, the Demersal Species Committee (with the ASMFC Summer Flounder Board) will meet from 1:00 until 4:00 p.m. At 7:00 p.m., there will be a hearing on Amendment 5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP).

On December 21, the full Council will meet from 8:00 a.m. until 2:30 p.m. From 2:30 p.m. until 4:30 p.m., there will be a scoping meeting for Amendment 1 to the Bluefish FMP.

On December 22, the full Council will meet from 8:00 a.m. until approximately noon.

The following topics may be discussed:

(1) Possible adjustment to the 1995 summer flounder harvest target and commercial quota,

(2) Review of hearing draft for Scup FMP,

(3) Scoping for Summer Flounder Amendment 7,

(4) Straddling stocks,

(5) Mid-Atlantic implications for New England groundfish emergency,

(6) Weakfish management,

(7) Other fishery management matters.

The Council meeting may be revised, lengthened or shortened based on the progress of the meeting. The Council may go into closed session to discuss personnel or national security matters.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 days prior to the meeting date.

Dated: November 30, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–30024 Filed 12–6–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

December 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Memorandum of Understanding (MOU) dated September 26, 1994 between the Governments of the United States and El Salvador establishes a limit for cotton and man-made fiber textile products in Categories 340/640 for the period January 1, 1995 through December 31, 1995.

These limits are subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (URATC). On the date that both the United States and El Salvador are members of the World Trade Organization, the restraint limits will be modified in accordance with the URATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Information regarding the 1995 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Memorandum of Understanding dated September 26, 1994 between the Governments of the United States and El Salvador; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of 874,500 dozen.

Imports charged to this category limit for the period October 1, 1994 through December 31, 1994 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated September 26, 1994 between the Governments of the United States and El Salvador.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs

exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–30036 Filed 12–6–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

December 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased, variously, for carryforward, special carryforward and 5 percent for allowance for traditional folklore products.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 55834, published on November 9, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated September 23, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the six-month period which began on July 1, 1994 and extends through December 31, 1994.

Effective on December 1, 1994, you are directed to amend the directive dated November 3, 1994 to increase the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated September 23, 1994 and the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted six-month limit [1]
Levels in Group I	
336/636	261,911 dozen.
341	375,065 dozen.
345	197,678 dozen.
351/651	202,669 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–30037 Filed 12–6–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–198–003]

Alabama-Tennessee Natural Gas Company; Proposed Recovery

December 1, 1994.

Take notice that on November 29 1994, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), filed to recover the net debit balance due and payable by Shippers on its system under Section 33.4 of the General Terms and Conditions of the Alabama-Tennessee's FERC Gas Tariff, Second Revised Volume No. 1. According to Alabama-Tennessee, the amount due results from a true-up performed by Alabama-Tennessee following the elimination of its Transportation Cost Rate Adjustment (TCRA). Alabama-Tennessee states that its filing reconciles the remaining costs associated with stranded upstream capacity still owed to Alabama-Tennessee, notwithstanding the elimination of its TCRA pursuant to the Commission's November 9, 1994 order in Docket No. RP93–198, and certain refunds recently made by Tennessee Gas Pipeline Company to be flowed through by Alabama-Tennessee.

Alabama-Tennessee proposes that it be permitted to recover this true-up adjustment through a one-time direct bill to affected customers which it will show on regular invoices that it will tender for January, 1995 service when its former resale customers' demand historically increases. Alabama-Tennessee states that by utilizing this approach, any adverse effects that these customers might otherwise experience during the time these costs are being recovered will be mitigated.

Alabama-Tennessee has requested that the Commission grant such waivers as may be necessary to accept and approve the filing as submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211. All such protests should be filed on or before December 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30061 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–3–010

Florida Gas Transmission Company; Notice of Filing

December 1, 1994.

Take notice that on November 21, 1994, Florida Gas Transmission Company (FGT) submitted revised standards of conduct under Order Nos.

497 *et seq.*[1] and Order Nos. 566 and 566–A.[2] FGT states that it is revising its standards of conduct to incorporate the changes required by Order No. 566–A.

FGT states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 2112 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before December 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30062 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–6–000]

Mississippi River Transmission Corporation; Flowthrough of Purchased Gas Refund and Take-or-Pay Costs

December 1, 1994.

Take notice that on November 28, 1994, Mississippi River Transmission Corporation (MRT) submitted worksheets reflecting the flowthrough of a purchased gas refund received by MRT from Equitable Resources Marketing (Equitable) and take-or-pay costs paid by MRT to Natural Gas Pipeline Company of America (NGPL).

MRT states that the purchase gas refund amount is a result of reallocated deliveries applicable to the month of March, 1993 and that the take-or-pay costs paid to NGPL are in accordance with NGPL's Docket No. RP94–248 accepted by Commission order dated October 27, 1993. MRT states that subject to receipt of Commission approval, it proposes to refund by check each customer's respective portion of the refund and take-or-pay costs, including interest through January 10, 1994.

MRT states that a copy of this filing is being mailed to each of MRT's former jurisdictional sales customers and the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30063 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–25–000]

Mississippi River Transmission Corporation; Proposed Change in FERC Gas Tariff

December 1, 1994.

Take notice that on November 28, 1994, Mississippi River Transmission Corporation (MRT) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets listed below, with a proposed effective date of January 1, 1995:

Eighth Revised Sheet No. 5
Eighth Revised Sheet No. 6
Eighth Revised Sheet No. 7
Third Revised Sheet No. 8

MRT states that the purpose of the filing is to adjust the Fuel Use and Loss Percentages under its Rate Schedules FTS, SCT, ITS, FSS and ISS to reflect revised methodologies that more accurately quantify the Current Fuel Use and Loss Percentages and Annual Fuel Use and Loss Surcharges.

MRT states that copies of its filing are available for inspection at its business offices, located in St. Louis, Missouri, and have been mailed to all of its affected customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before December 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30064 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2188–030]

Montana Power Company; Authorization for Continued Project Operation

December 1, 1994.

On November 25, 1992, Montana Power Company, licensee for the Missouri-Madison Project No. 2188, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder Project No. 2188 is located on the Missouri and Madison Rivers in Cascade, Lewis and Clark, Madison, and Gallatin Counties, Montana.

The license for Project No. 2188 was issued for a period ending November 30, 1994. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Reg. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending susnet date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994, III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994).

prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2188 is issued to Montana Power Company for a period effective December 1, 1994, through November 30, 1995, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 1995, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Montana Power Company is authorized to continue operation of the Missouri-Madison Project No. 2188 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30065 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–428–000]

Natural Gas Pipeline Company of America; Technical Conference

December 1, 1994.

Take notice that on Thursday, January 12, 1995, at 10:00 a.m., the Commission's staff will convene a technical conference to allow the parties to address the remaining issue as discussed in the Commission's October 27, 1994 order in the above-captioned proceeding. The conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426. All parties should be represented by principals who have the authority to commit to a settlement.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30066 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–56–000]

Questar Pipeline Company; Storage Report

December 1, 1994.

Take notice that on November 29, 1994, Questar Pipeline Company (Questar), as required by the Commission's orders issued in the referenced restructuring dockets,[1] submits for filing studies required in connection with (1) Questar's retention of 3 Bcf of working-gas capacity at its Clay Basin storage facility for system operation and balancing and (2) the assignment of 7 Bcf of Clay Basin working-gas capacity to Mountain Fuel Supply Company.

Questar states that it has distributed copies of this filing to all parties of record in Questar's Order No. 636 restructuring proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30067 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[1] 62 FERC ¶ 61,192 (1993), order on reh'g, 64 FERC ¶ 61,157 (1993).

[Docket Nos. RP91–203–050 and RP94–309–005]

Tennessee Gas Pipeline Company; Tariff Filing

December 1, 1994.

Take notice that on November 23, 1994, Tennessee Gas Pipeline Company (Tennessee) filed the following tariff sheets to be effective on the specified dates to comply with Commission orders in the referenced dockets.

Item A

Fifth Revised Volume No. 1

Substitute Original Sheet No. 29A

Item B

Fifth Revised Volume No. 1

Third Substitute Original Sheet No. 22
Second Revised Second Substitute Original Sheet No. 22
Substitute First Revised Third Revised Sheet No. 22
Substitute Fifth Revised Sheet No. 22
Third Substitute Original Sheet No. 24
Second Revised Second Substitute Original Sheet No. 24
Second Revised Third Revised Sheet No. 24
Substitute Fifth Revised Sheet No. 24

Item C

Fourth Revised Volume No. 1

Substitute Original Sheet No. 186
Substitute First Revised Sheet No. 188
Second Substitute First Revised Sheet No. 190
Substitute Original Sheet No. 192
Substitute Original Sheet No. 204
Substitute Original Sheet No. 206

Item D

Original Volume No. 2

Second Substitute 29th Revised Sheet No. 5
Substitute 13th Revised Sheet No. 9
Substitute Fifth Revised Sheet No. 9a

Tennessee states that the revisions made by Tennessee comply with the Order in Docket No. RP91–203, November 9, 1994 (69 FERC ¶ 61,212) accepting tariff sheets implementing Tennessee's cost of service settlement and with the order of November 18 in Docket Nos. RP94–309 et al. (69 FERC ¶ 61,234). In particular, Tennessee has clarified, through the tariff sheet listed in Item A, which surcharges apply to the PTR Rate Schedule and clearly stated the rate after current adjustment will be increased to reflect the applicable surcharges.

In Item B, Tennessee has reflected the removal of GSR costs from its IT rates for the period of September 1993 through April 1994 and a reduction to the GSR components effective May 1 and August 1 (respectively). Tennessee is, however, reserving its right to seek rehearing of the Commission's order but has adjusted the rates as specified by the

Commission, as demonstrated in Schedules 1–1.3.

In Item C, Tennessee modified the effective date of the settlement fuel rates for Rate Schedule NET shippers to November 1, 1992. This change does not apply to the Segment U rates which are subject to separate determination in Docket No. RP92–132. Finally, in Item D, Tennessee has reflected the appropriate settlement rate for OSP under the T–180 Rate Schedule for the period November 1992 through September 1993 and from September 1993 to current.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30068 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–147–007]

Tennessee Gas Pipeline Company; Rate Filing

December 1, 1994.

Take notice that on November 23, 1994, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute First Revised Sheet No. 94, Substitute Original Sheet Nos. 95A and 95B, Substitute First Revised Sheet Nos. 96 and 100, with a proposed effective date of November 1, 1994. Tennessee states that the purpose of this filing is to comply with the Commission's letter order dated November 15, 1994.

Tennessee states that the Commission approved Tennessee's previous filing subject to a few modifications. The instant filing implements those modifications. Specifically, Tennessee has clearly stated at Sheet No. 95B that any authorized overrun transportation will be subject to the scheduling priorities of Section 5(e) of Article III of its General Terms and Conditions, which clearly states that authorized overrun has a priority below firm transportation. Tennessee has also modified the language of § 3.4(b) to clarify that Tennessee will waive both the overrun charge and the $25.00 penalty when overruns are authorized. Tennessee has also added the language that had been omitted from Section 8.1 of the FS Rate Schedule.

Tennessee also states that has made a few other changes in the instant filing to either clarify items or respond to customer requests. Specifically, Tennessee has replaced the term "excess deliverability" with "conditional deliverability" wherever it appears in the FS Rate Schedule and replaced the term "customer" with "Shipper" wherever it appeared. Tennessee has clarified that Section 3.4(e) applies to assignments as well as agency arrangements. Finally, Tennessee has clarified that the requirement that a Shipper's Maximum Storage Quantity be between 30 and 150 times a shipper's Maximum Daily Withdrawal Quantity applies exclusive of any conditional deliverability awarded in this docket.

While Tennessee does not believe any waivers are necessary, Tennessee respectfully requests that the Commission grant any waivers it deems necessary for acceptance of this filing.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before December 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30069 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–425–002]

Tennessee Gas Pipeline Company; Tariff Filing

December 1, 1994.

On November 23, 1994, Tennessee Gas Pipeline Company (Tennessee) filed information in response to the order issued October 27 in the referenced docket, 69 FERC ¶ 61,094 (1994), and the following revised tariff sheets to be effective November 1, 1994 to reflect the revisions to the GSR component of the Rate Schedules IT, IT–X, and PAT:

Sub 1st Rev Sheet No. 21A
6th Rev Sheet No. 22
Sub 1st Rev Sheet No. 22A
6th Rev Sheet No. 24
Sub 9st Rev Sheet No. 30

Tennessee states that the tariff revisions respond to the order issued November 18, 1994 in Docket Nos. RP94–309, et al. (69 FERC ¶ 61,234) where the Commission directed Tennessee to file tariff sheets reflecting the elimination of GSR costs allocated to its IT rates based on the original amortization period reflected in Docket Nos. RP93–151 and RP94–39. Tennessee states that it is filing concurrently in Docket Nos. RP91–203 and RP94–309 tariff sheets reflecting the same adjustment for periods prior to November 1, 1994.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30071 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–103–000]

Tennessee Gas Pipeline Company, CNG Transmission Corporation, National Fuel Gas Supply Corporation; Application

December 1, 1994.

Take notice that on November 29, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, and National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, collectively referred to as Applicants, jointly filed in Docket No. CP95–103–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon an exchange service rendered pursuant

to Tennessee's Rate Schedule X–50, CNG's Rate Schedule X–10, and National Fuel's Rate Schedule X–8, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants state that this exchange service was authorized on August 10, 1972 in Docket No. CP72–203, and amended on July 29, 1976. It is further stated, that this service was performed under the terms of an exchange agreement dated October 28, 1975; under which CNG and National Fuel agreed to deliver up to 15,000 Mcf of natural gas per day to Tennessee. National Fuel would deliver for its affiliate, The Sylvania Corporation, a percentage of the volumes of natural gas from production at the Raisch Unit in the Adrian Pool to Tennessee's 24-inch line through CNG's[1] existing facilities in Steuben County, New York, and receive in turn equivalent volumes of natural gas from Tennessee for the account of Sylvania Corporation at the Ellisburg delivery point in Potter County, Tennessee. All gas delivered to Tennessee by CNG would be considered gas delivered for the account of National Fuel until such time as CNG had returned to National Fuel the volumes of gas reserves owned by Sylvania in the Raisch Unit.

No facilities are proposed to be abandoned in this proceeding.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 22, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30072 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[1] CNG's legal name was previously Consolidated Gas Supply Corporation (until 1980) and Consolidated Gas Transmission Corporation (until 1988).

[Docket No. CP95–102–000]

Williams Natural Gas Company; Request Under Blanket Authorization

December 1, 1994.

Take Notice that on November 23, 1994, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–102–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by sale to Peoples Natural Gas Company (Peoples) facilities in Reno, Sedgwick and Cowley Counties, Kansas, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, WNG proposes to abandon approximately 4,522 feet of 3-inch and 4-inch lateral pipeline, measuring, regulating and appurtenant facilities serving the towns of Haven, Mt. Hope and New Salem, Kansas. WNG proposes to sell the facilities for $50,585.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30073 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–267–003]

Wyoming Interstate Company, Ltd.; Filing of Revised Tariff Sheets

December 1, 1994.

Take notice that on November 29, 1994, Wyoming Interstate Company, Ltd. (WIC) filed a Motion To Place Rates Into Effect accompanied by revised tariff sheets incorporating the new rates as revised to reflect a December 1, 1994 effective date and a revised Annual Charge Adjustment (ACA) rate previously effective October 1, 1994. WIC states that on June 29, 1994, the Commission accepted WIC's rate filing, and suspended its effectiveness until December 1, 1994 (67 FERC ¶ 61,390). WIC's motion places those higher rates into effect on December 1, 1994, subject to refund and other conditions, and its revised tariff sheets include those which were suspended and with respect to which no compliance changes were required by the Commission's June 29, 1994 order.

WIC states that copies of this filing have been served on WIC's jurisdictional customers and public bodies, and the filing is available for public inspection at WIC's offices in Colorado Springs, Colorado.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before December 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30074 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2493–006–WA]

Puget Sound Power & Light Company; Correction Of Comment Date

December 1, 1994.

In the notice issued November 23, 1994 (59 FR 61313, November 30, 1994), the date for filing written comments on the Draft Environmental Impact Statement should be January 23, 1995, instead of January 17, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30059 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–411–001]

Tennessee Gas Pipeline Company; Rate Filing

December 1, 1994.

Take notice that on November 23, 1994, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Second Revised Sheet Nos. 126, 128, 129, Substitute Original Sheet No. 659D and Third Revised Sheet No. 125. Tennessee states that the purpose of this filing is to comply with the Commission's October 27, 1994 order in the above-referenced docket approving Tennessee's proposed PAT Rate Schedule. Tennessee requests an effective date for the above-referenced sheets of November 1, 1994.

Tennessee states that in its October 27 Order, the Commission conditioned its acceptance on Tennessee responding to concerns that the Commission had with the filing. In response, the instant filing, eliminates the reference to "Shipper's facilities" in § 3.2 of the PAT Rate Schedule at Sheet No. 125. Second, Tennessee has clarified at Sheet No. 125 that scheduling under Rate Schedule PAT is subject to the same scheduling provisions as all other rate schedules. Third, Tennessee made the changes requested by the New England Customer Group at Sheet No. 659D.

In addition to the above-described changes, Tennessee states that it has modified the nominations procedures to allow shippers to nominate PAT Service on a monthly basis during the Winter Season instead of requiring them to nominate on a seasonal basis. Tennessee has agreed to make this change at the request of shippers because monthly nominations will provide shippers with additional flexibility.

Tennessee also states that, in response to concerns that certain restrictions on PAT service might not be necessary or might be discriminatory, restricting PAT service to storage points is necessary at this time in order to avoid problems with Tennessee's nomination and allocation system. Tennessee is willing to reevaluate the need for this restriction, but does not feel that it can ensure smooth operations for this winter without it. Similarly, Tennessee states that because all of Tennessee's storage interconnection points are covered by balancing agreements, the balancing agreement requirement will not prevent anyone from using this service this winter. If, after one winter season of operations, Tennessee removes the storage restriction, it will also reevaluate the need for the balancing agreement requirement.

While Tennessee does not believe any waivers are necessary, Tennessee respectfully requests that the Commission grant any waivers it deems necessary for acceptance of this filing.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before December 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30070 Filed 12–6–94; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket Nos. ST95–1–000 et al.]

Northern Illinois Gas Company; Self-Implementing Transactions

December 1, 1994.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to section 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to section 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under section 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

certificate issued under section 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to section 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to section 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–1	NORTHERN ILLINOIS GAS CO.	NATURAL GAS P/L CO OF AM., ET AL.	10–03–94	C	50,000	N	F/I	09–03–94	03–31–95
ST95–2	NORTHERN ILLINOIS GAS CO.	NATURAL GAS P/L CO OF AM., ET AL.	10–03–94	C	20,000	N	I	09–15–94	10–25–94
ST95–3	CYPRESS GAS PIPELINE CO.	COLUMBIA GULF. TRANS. CO., ET AL.	10–03–94	C	15,000	N	I	07–01–94	INDEF.
ST95–4	ACADIAN GAS PIPELINE SYSTEM.	NATURAL GAS P/L CO. OF AM., ET AL.	10–03–94	C	15,000	N	I	07–11–94	INDEF.
ST95–5	NORAM GAS TRANSMISSION CO.	DELHI GAS MARKETING CORP.	10–03–94	G–S	100,000	N	I	09–01–94	INDEF.
ST95–6	NORAM GAS TRANSMISSION CO.	TIDEWEST TRADING & TRANSPORT CO.	10–03–94	G–S	100,000	N	I	09–01–94	INDEF.
ST95–7	ACADIAN GAS PIPELINE SYSTEM.	NATURAL GAS P/L CO. OF AM., ET AL.	10–03–94	C	20,000	N	I	09–01–94	INDEF.
ST95–8	TEJAS GAS PIPELINE CO.	SEAGAS PIPELINE CO.	10–04–94	C	25,000	N	I	08–12–94	INDEF.
ST95–9	TEJAS GAS PIPELINE CO.	AMOCO ENERGY TRADING CORP.	10–04–94	G–I	25,000	N	I	08–01–94	INDEF.
ST95–10	COLORADO INTERSTATE GAS CO.	VESSELS OIL & GAS CO.	10–03–94	G–S	6,000	N	F	08–01–94	12–31–10
ST95–11	COLUMBIA GULF TRANSMISSION CO.	PERRY GAS COMPANIES, INC.	10–03–94	G–S	20,000	N	I	09–26–94	INDEF.
ST95–12	COLUMBIA GULF TRANSMISSION CO.	MATRIX GAS CORP ...	10–03–94	G–S	25,000	N	I	09–26–94	INDEF.
ST95–13	COLORADO INTERSTATE GAS CO.	MID-CONTINENT ENERGY, INC.	10–04–94	G–S	110	N	I	04–01–94	INDEF.
ST95–14	TEXAS GAS TRANSMISSION CORP.	COLUMBIA ENERGY SERVICES CORP.	10–04–94	G–S	75,000	Y	I	08–03–94	INDEF.
ST95–15	TEXAS GAS TRANSMISSION CORP.	GASLANTIC CORP	10–04–94	G–S	10,000	N	I	09–13–94	INDEF.
ST95–16	TEXAS GAS TRANSMISSION CORP.	MERIDIAN OIL TRADING, INC.	10–04–94	G–S	30,000	N	I	03–01–94	INDEF.
ST95–17	CANYON CREEK COMPRESSION CO.	CHEVRON U.S.A. INC	10–06–94	G–S	20,000	N	F	10–01–94	09–30–99
ST95–18	TRAILBLAZER PIPELINE CO.	CITY OF HASTINGS UTILITIES.	10–06–94	G–S	14,000	N	F	10–01–94	09–30–99
ST95–19	EL PASO NATURAL GAS CO.	TOTAL MINATOME CORP.	10–07–94	G–S	5,150	N	I	09–08–94	INDEF.
ST95–20	EL PASO NATURAL GAS CO.	PREMIER ENTERPRISES, INC.	10–07–94	G–S	2,500	N	I	09–07–94	INDEF.
ST95–21	KOCH GATEWAY PIPELINE CO.	CYPRESS GAS MARKETING CO.	10–11–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–22	KOCH GATEWAY PIPELINE CO.	APACHE TRANSMISSION CORP.-TEXAS.	10–11–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–23	KOCH GATEWAY PIPELINE CO.	AMERADA HESS CORP.	10–11–94	G–S	N/A	N	I	10–01–94	G–S
ST95–24	KOCH GATEWAY PIPELINE CO.	AIR PRODUCTS & GENERAL, INC.	10–11–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–25	KOCH GATEWAY PIPELINE CO.	ASSOCIATED INTRASTATE PIPELINE CO.	10–11–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–26	KOCH GATEWAY PIPELINE CO.	AQUILA ENERGY MARKETING CORP.	10–11–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–27	TEXAS GAS GATHERING CO.	NATURAL GAS P/L CO. OF AMERICA.	10–07–94	C	600	N	I	06–01–94	06–30–98
ST95–28	WESTAR TRANSMISSION CO.	KN ENERGY, INC	10–11–94	C	5,000	N	I	06–01–94	INDEF.
ST95–29	WESTAR TRANSMISSION CO.	NORTHERN NATURAL GAS CO.	10–11–94	C	25,000	N	I	06–01–94	INDEF.
ST95–30	WESTAR TRANSMISSION CO.	NORTHERN NATURAL GAS CO.	10–11–94	C	20,000	N	I	06–01–94	INDEF.
ST95–31	WESTAR TRANSMISSION CO.	RED RIVER PIPELINE, L.P.	10–11–94	C	20,000	N	I	06–01–94	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–32	TRANSOK, INC	ANR PIPELINE CO., ET AL.	10–11–94	C	10,000	N	I	09–21–94	INDEF.
ST95–33	TRANSCONTINENTAL GAS P/L CORP.	TENNESSEE GAS PIPELINE CO.	10–11–94	G	110,000	N	I	09–27–94	10–31–94
ST95–34	NATURAL GAS P/L CO. OF AMERICA.	PEOPLES GAS LIGHT AND COKE CO.	10–11–94	B	150,000	N	I	08–01–87	INDEF.
ST95–35	NORAM GAS TRANSMISSION CO.	CEDAR CHEMICAL CORP.	10–11–94	G–S	350	N	F	10–01–94	INDEF.
ST95–36	NORAM GAS TRANSMISSION CO.	GENERAL ELECTRIC CO.	10–11–94	G–S	530	N	F	10–01–94	INDEF.
ST95–37	NORAM GAS TRANSMISSION CO.	HELENA COTTON OIL CO.	10–11–94	G–S	50	N	F	10–01–94	INDEF.
ST95–38	NORAM GAS TRANSMISSION CO.	WHEELER BRICK CO., INC.	10–11–94	G–S	300	N	F	10–01–94	INDEF.
ST95–39	NORAM GAS TRANSMISSION CO.	SMOKY HOLLOW FOODS.	10–11–94	G–S	615	N	F	10–01–94	INDEF.
ST95–40	NORAM GAS TRANSMISSION CO.	HOOVER TREATING WOOD PRODUCTS.	10–11–94	G–S	150	N	F	10–01–94	INDEF.
ST95–41	NORTHERN GAS CO .	K N INTERSTATE GAS TRANSMISSION CO.	10–12–94	G–HT	5,000	N	I	08–02–94	INDEF.
ST95–42	NORTHERN GAS CO .	K N INTERSTATE GAS TRANSMISSION CO.	10–12–94	G–HT	2,500	N	I	08–01–94	INDEF.
ST95–43	SOUTHERN CALIFORNIA GAS CO.	U.S. GAS TRANSPORTATION, INC.	10–12–94	G–LT	100,000	N	I	09–12–94	09–11–95
ST95–45	QUESTAR PIPELINE CO.	BONNEVILLE FUELS MARKETING CORP.	10–13–94	G–S	300	N	F	10–01–94	10–31–94
ST95–46	COLUMBIA GAS TRANSMISSION CORP.	U.S. ENERGY DEVELOPMENT CORP.	10–13–94	G–S	50,000	N	I	10–01–94	INDEF.
ST95–47	COLUMBIA GAS TRANSMISSION CORP.	CHEVRON U.S.A., INC	10–13–94	G–S	500,000	N	I	10–01–94	INDEF.
ST95–48	COLUMBIA GAS TRANSMISSION CORP.	QUAKER STATE CORP.	10–13–94	G–S	410	N	I	10–01–94	INDEF.
ST95–49	COLUMBIA GAS TRANSMISSION CORP.	TRU FIT PRODUCTS CORP.	10–13–94	G–S	425	N	I	10–01–94	INDEF.
ST95–50	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA ENERGY SERVICES CORP.	10–13–94	G–S	1,500	Y	F	10–01–94	INDEF.
ST95–51	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA ENERGY SERVICES CORP.	10–13–94	G–S	750	Y	F	10–01–94	INDEF.
ST95–52	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA ENERGY SERVICES CORP.	10–13–94	G–S	1,500	Y	F	10–01–94	INDEF.
ST95–53	COLUMBIA GAS TRANSMISSION CORP.	OHIO EDISON CO	10–13–94	G–S	74,250	N	I	10–01–94	INDEF.
ST95–54	COLUMBIA GAS TRANSMISSION CORP.	MIDWEST GAS SERVICES INC.	10–13–94	G–S	20,000	N	I	09–01–94	INDEF.
ST95–55	COLUMBIA GAS TRANSMISSION CORP.	ORMET ALUMINUM MILL PRODUCTS CORP.	10–13–94	G–S	15,000	N	I	10–01–94	INDEF.
ST95–56	COLUMBIA GAS TRANSMISSION CORP.	MIDWEST GAS SERVICE, INC.	10–13–94	G–S	N/A	N	I	09–01–94	INDEF.
ST95–57	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF PENNSYLVANIA, INC.	10–13–94	G–S	456,876	Y	F	10–01–94	INDEF.
ST95–58	COLUMBIA GAS TRANSMISSION CORP.	NORTH. INDUSTRIAL ENERGY DEV., INC.	10–13–94	B	4,000	N	I	10–01–94	INDEF.
ST95–59	TENNESSEE GAS PIPELINE CO.	ORANGE AND ROCKLAND UTILITIES, INC.	10–13–94	G–S	8,946	N	F	10–01–94	INDEF.
ST95–60	TENNESSEE GAS PIPELINE CO.	CENTRAL HUDSON GAS & ELECTRIC CORP.	10–13–94	G–S	739	N	F	10–01–94	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–61	TENNESSEE GAS PIPELINE CO.	BALTIMORE GAS & ELECTRIC CO.	10–13–94	G–S	7,518	N	F	10–01–94	INDEF.
ST95–62	TENNESSEE GAS PIPELINE CO.	PEOPLE'S NATURAL GAS CO.	10–13–94	G–S	460	N	F	10–01–94	INDEF.
ST95–63	TENNESSEE GAS PIPELINE CO.	NEW YORK STATE ELECTRIC & GAS CORP.	10–13–94	G–S	3,499	N	F	10–01–94	INDEF.
ST95–64	MIDWESTERN GAS TRANSMISSION.	TENNECO GAS MARKETING CO.	10–13–94	G–S	5,200	A	F	10–02–94	INDEF.
ST95–65	MIDWESTERN GAS TRANSMISSION CO.	WOODWARD MARKETING, INC.	10–13–94	G–S	800	N	F	10–01–94	INDEF.
ST95–66	TENNESSEE GAS PIPELINE CO.	CHEVRON USA. INC ..	10–13–94	G–S	200,000	N	I	10–01–94	INDEF.
ST95–67	TEXAS GAS TRANSMISSION CORP.	UNION OIL CO. OF CALIFORNIA.	10–13–94	G–S	150	N	I	10–01–94	INDEF.
ST95–68	TEXAS GAS TRANSMISSION CORP.	NGC TRANSPORTATION, INC.	10–13–94	G–S	300,000	N	I	10–02–94	INDEF.
ST95–69	WILLIAM NATURAL GAS CO.	UNIMARK, L.L.C	10–14–94	G–S	5,000	N	I	08–31–94	08–01–95.
ST95–70	TEXAS EASTERN TRANSMISSION CORP.	ORANGE AND ROCKLAND UTILITIES, INC.	10–14–94	G–S	235,000	N	I	09–15–94	INDEF.
ST95–71	NATURAL GAS P/L CO. OF AMERICA.	1 SOURCE ENERGY SERVICES CO.	10–14–94	G–S	5,000	N	F	10–01–94	10–31–94.
ST95–72	KOCH GATEWAY PIPELINE CO.	TEJAS HYDROCARBONS CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–73	KOCH GATEWAY PIPELINE CO.	DESOTO PIPELINE, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–74	KOCH GATEWAY PIPELINE CO.	GULF STATES UTILITIES CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–75	KOCH GATEWAY PIPELINE CO.	FIRST CHEMICAL CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–76	KOCH GATEWAY PIPELINE CO.	FRM. INC	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–77	KOCH GATEWAY PIPELINE CO.	UNION OIL CO. OF CALIFORNIA.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–78	KOCH GATEWAY PIPELINE CO.	INTERCON GAS, INC .	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–79	KOCH GATEWAY PIPELINE CO.	KM TEXAS PIPELINE CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–80	KOCH GATEWAY PIPELINE CO.	PAN-ALBERTA GAS (U.S.) INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–81	KOCH GATEWAY PIPELINE CO.	CITIZENS RESOURCES CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–82	KOCH GATEWAY PIPELINE CO.	BAY-TECH OPERATING CO., INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–83	KOCH GATEWAY PIPELINE CO.	CHEVRON U.S.A. INC	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–84	KOCH GATEWAY PIPELINE CO.	RALLY PIPELINE CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–85	KOCH GATEWAY PIPELINE CO.	PONTCHARTRAIN NATURAL GAS SYSTEM.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–86	KOCH GATEWAY PIPELINE CO.	INTERNATIONAL PAPER CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–87	KOCH GATEWAY PIPELINE CO.	VALERO GAS MARKETING LP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–88	KOCH GATEWAY PIPELINE CO.	SOUTHERN NATURAL GAS CO.	10–14–94	G	N/A	N	I	10–01–94	INDEF.
ST95–89	KOCH GATEWAY PIPELINE CO.	PINE PIPELINE CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–90	KOCH GATEWAY PIPELINE CO.	MONSANTO CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–91	KOCH GATEWAY PIPELINE CO.	SEAGULL MARKETING SERVICES, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–92	KOCH GATEWAY PIPELINE CO.	BOCCE ENERGY CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–93	KOCH GATEWAY PIPELINE CO.	TEXAS SOUTHERN PIPELINE INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–94	KOCH GATEWAY PIPELINE CO.	UTRADE GAS CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–95	KOCH GATEWAY PIPELINE CO.	NICOR EXPLORATION CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–96	KOCH GATEWAY PIPELINE CO.	TRUNKLINE GAS CO .	10–14–94	G	N/A	N	I	10–01–94	INDEF.
ST95–97	KOCH GATEWAY PIPELINE CO.	SUPERIOR NATURAL GAS CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–98	KOCH GATEWAY PIPELINE CO.	TOTAL MINATOME CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–99	KOCH GATEWAY PIPELINE CO.	EAGLE NATURAL GAS CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–100	KOCH GATEWAY PIPELINE CO.	TRADE & DEVELOPMENT CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–101	KOCH GATEWAY PIPELINE CO.	FINA NATURAL GAS CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–102	KOCH GATEWAY PIPELINE CO.	SPORT PIPELINE CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–103	KOCH GATEWAY PIPELINE CO.	TRANSOK GAS CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–104	KOCH GATEWAY PIPELINE CO.	UNION PACIFIC FUELS, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–105	KOCH GATEWAY PIPELINE CO.	O & R ENERGY, INC ..	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–106	KOCH GATEWAY PIPELINE CO.	DOMINO SUGAR CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–107	KOCH GATEWAY PIPELINE CO.	CATEX ENERGY INC .	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–108	KOCH GATEWAY PIPELINE CO.	LEACH BROTHERS INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–109	KOCH GATEWAY PIPELINE CO.	ORYX GAS MARKETING LTD PARTNERSHIP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–110	KOCH GATEWAY PIPELINE CO.	BROOKLYN INTERSTATE NAT. GAS CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–111	KOCH GATEWAY PIPELINE CO.	DELHI GAS VENTURES CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–112	KOCH GATEWAY PIPELINE CO.	CNG TRANSMISSION CORP.	10–14–94	G	N/A	N	I	10–01–94	INDEF.
ST95–113	KOCH GATEWAY PIPELINE CO.	ERGON REFINING, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–114	KOCH GATEWAY PIPELINE CO.	COWBOY PIPELINE SERVICE CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–115	KOCH GATEWAY PIPELINE CO.	FEC MARKETING, INC	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–116	KOCH GATEWAY PIPELINE CO.	BROCK GAS SYSTEMS & EQUIPMENT CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–117	KOCH GATEWAY PIPELINE CO.	ENERCOR, INC	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–118	KOCH GATEWAY PIPELINE CO.	ANADARKO TRADING CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–119	KOCH GATEWAY PIPELINE CO.	TORCH GAS, L.C	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–120	KOCH GATEWAY PIPELINE CO.	CHAMPION NATURAL GAS CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–121	KOCH GATEWAY PIPELINE CO.	AMES FINANCIAL, INC	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–122	KOCH GATEWAY PIPELINE CO.	CONTINENTAL NATURAL GAS, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–123	KOCH GATEWAY PIPELINE CO.	CORNERSTONE NATURAL GAS CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–124	KOCH GATEWAY PIPELINE CO.	CONSOLIDATED FUEL CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–125	KOCH GATEWAY PIPELINE CO.	CONCORDE GAS MARKETING, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–126	KOCH GATEWAY PIPELINE CO.	NESTE TRADING (USA) INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–127	KOCH GATEWAY PIPELINE CO.	CHEVRON U.S.A. INC	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–128	KOCH GATEWAY PIPELINE CO.	CHEVRON U.S.A. INC	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–129	KOCH GATEWAY PIPELINE CO.	CIMARRON GAS TRANSMISSION, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–130	KOCH GATEWAY PIPELINE CO.	PHIBRO ENERGY, INC	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–131	KOCH GATEWAY PIPELINE CO.	STELLAR GAS CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–132	KOCH GATEWAY PIPELINE CO.	CEDAR GAS CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–133	KOCH GATEWAY PIPELINE CO.	CENTRAN CORP	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–134	KOCH GATEWAY PIPELINE CO.	POLO ENERGY CORP	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–135	KOCH GATEWAY PIPELINE CO.	PLAINS MARKETING & TRANSPORTATION.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–136	KOCH GATEWAY PIPELINE CO.	AMERICAN HUNTER EXPLORATION LTD.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–137	KOCH GATEWAY PIPELINE CO.	ENERMAX, A DIVISION OF NUKEM, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–138	KOCH GATEWAY PIPELINE CO.	ENERMARK GAS GATHERING CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–139	KOCH GATEWAY PIPELINE CO.	EQUITABLE RESOURCES MARKETING CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–140	KOCH GATEWAY PIPELINE CO.	FMI HYDROCARBON CO., INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–141	KOCH GATEWAY PIPELINE CO.	TEXACO GAS MARKETING INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–142	KOCH GATEWAY PIPELINE CO.	TAUBER OIL CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–143	KOCH GATEWAY PIPELINE CO.	LOUISIANA LAND & EXPLORATION CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–144	KOCH GATEWAY PIPELINE CO.	SANTA FE INTERNATIONAL CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–145	KOCH GATEWAY PIPELINE CO.	LONE STAR GAS CO. OF TEXAS, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–146	KOCH GATEWAY PIPELINE CO.	PRODUCTION GATHERING CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–147	KOCH GATEWAY PIPELINE CO.	LOUIS DREYFUS ENERGY CORP.	10–14–94	G	N/A	N	I	10–01–94	INDEF.
ST95–148	KOCH GATEWAY PIPELINE CO.	SCHULLER INTERNATIONAL INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–149	KOCH GATEWAY PIPELINE CO.	RANGELINE CORP	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–150	KOCH GATEWAY PIPELINE CO.	ONEOK PRODUCTS CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–151	KOCH GATEWAY PIPELINE CO.	OLYMPIC PRODUCTION CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–152	KOCH GATEWAY PIPELINE CO.	AMERICAN CENTRAL GAS COMPANIES INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–153	KOCH GATEWAY PIPELINE CO.	1 SOURCE ENERGY SERVICES.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–154	KOCH GATEWAY PIPELINE CO.	DELTA PIPELINE CO .	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–155	KOCH GATEWAY PIPELINE CO.	EXCEL GAS MARKETING, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–156	KOCH GATEWAY PIPELINE CO.	LIG CHEMICAL CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–157	KOCH GATEWAY PIPELINE CO.	OKALOOSA COUNTY GAS DIST.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–158	KOCH GATEWAY PIPELINE CO.	TENNGASCO CORP ...	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–159	KOCH GATEWAY PIPELINE CO.	HIGHLAND ENERGY CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–160	KOCH GATEWAY PIPELINE CO.	HUGGS GAS MARKETING.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–161	KOCH GATEWAY PIPELINE CO.	PEOPLES GAS SYSTEM INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.

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ST95–162	KOCH GATEWAY PIPELINE CO.	OLYMPIC FUELS CO .	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–163	KOCH GATEWAY PIPELINE CO.	SCANA HYDRO-CARBONS, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–164	KOCH GATEWAY PIPELINE CO.	TRANAM ENERGY INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–165	KOCH GATEWAY PIPELINE CO.	TRANSWORLD OIL U.S.A., INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–166	KOCH GATEWAY PIPELINE CO.	UNIGAS ENERGY, INC	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–167	KOCH GATEWAY PIPELINE CO.	TRANSOK GAS TRANSMISSION CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–168	KOCH GATEWAY PIPELINE CO.	RIVERWAY GAS PIPE-LINE CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–169	KOCH GATEWAY PIPELINE CO.	RIVERSIDE ENERGY RESOURCES.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–170	KOCH GATEWAY PIPELINE CO.	HARBERT OIL & GAS CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–171	KOCH GATEWAY PIPELINE CO.	NATIONAL GAS RE-SOURCES LTD PART.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–172	KOCH GATEWAY PIPELINE CO.	NGC TRANSPOR-TATION, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–173	KOCH GATEWAY PIPELINE CO.	KM TEXAS PIPELINE CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–174	KOCH GATEWAY PIPELINE CO.	CONOCO INC., AS AGENT FOR DU PONT.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–175	KOCH GATEWAY PIPELINE CO.	GOODRICH OIL CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–176	KOCH GATEWAY PIPELINE CO.	ENTEX, A DIVISION OF ARKLA, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–177	KOCH GATEWAY PIPELINE CO.	LEDCO INC	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–178	KOCH GATEWAY PIPELINE CO.	GULF STATES GAS CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–179	KOCH GATEWAY PIPELINE CO.	HOUSTON LIGHTING & POWER CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–180	KOCH GATEWAY PIPELINE CO.	COLUMBIA GAS TRANSMISSION CORP.	10–14–94	G	N/A	N	I	10–01–94	INDEF.
ST95–181	KOCH GATEWAY PIPELINE CO.	ARCO OIL AND GAS CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–182	KOCH GATEWAY PIPELINE CO.	USAGAS PIPELINE, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–183	KOCH GATEWAY PIPELINE CO.	TEJAS GAS CORP	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–184	KOCH GATEWAY PIPELINE CO.	SHELL OIL CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–185	KOCH GATEWAY PIPELINE CO.	CNG TRADING CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–186	KOCH GATEWAY PIPELINE CO.	HOUSTON GAS EX-CHANGE CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–187	KOCH GATEWAY PIPELINE CO.	KERR-MCGEE CORP .	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–188	KOCH GATEWAY PIPELINE CO.	AMERICAN PIPELINE CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–189	KOCH GATEWAY PIPELINE CO.	CITGO PETROLEUM CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–190	KOCH GATEWAY PIPELINE CO.	NORTHWESTERN MUTUAL LIFE INS. CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–191	KOCH GATEWAY PIPELINE CO.	AMERICAN NATURAL GAS PRODUCTION CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–192	KOCH GATEWAY PIPELINE CO.	TRANSAMERICAN GAS TRANS-MISSION CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–193	KOCH GATEWAY PIPELINE CO.	MURPHY OIL USA, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.

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ST95–194	KOCH GATEWAY PIPELINE CO.	PENNZOIL GAS MARKETING CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–195	KOCH GATEWAY PIPELINE CO.	TRISTAR GAS CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–196	KOCH GATEWAY PIPELINE CO.	ASHTON ENERGY, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–197	KOCH GATEWAY PIPELINE CO.	CALCASIEU GAS GATHERING SYSTEM.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–198	KOCH GATEWAY PIPELINE CO.	CITIZENS GAS SUPPLY CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–199	KOCH GATEWAY PIPELINE CO.	TENNECO GAS MARKETING CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–200	KOCH GATEWAY PIPELINE CO.	OWENS-ILLINOIS CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–201	KOCH GATEWAY PIPELINE CO.	ARKLA ENERGY RESOURCES.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–202	KOCH GATEWAY PIPELINE CO.	TEXICAN NATURAL GAS CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–203	KOCH GATEWAY PIPELINE CO.	TEXAS GAS TRANSMISSION CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–204	KOCH GATEWAY PIPELINE CO.	COASTAL PIPELINE CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–205	KOCH GATEWAY PIPELINE CO.	CANADIAN OCCIDENTIAL OF CAL., INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–206	KOCH GATEWAY PIPELINE CO.	VALERO TRANSMISSION CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–207	KOCH GATEWAY PIPELINE CO.	CITRUS MARKETING, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–208	KOCH GATEWAY PIPELINE CO.	NASA/JOHN C. STENNIS SPACE CENTER.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–209	KOCH GATEWAY PIPELINE CO.	MID LOUISIANA MARKETING CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–210	KOCH GATEWAY PIPELINE CO.	LOUISIANA OPERATING CO., INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–211	KOCH GATEWAY PIPELINE CO.	JOSEPH ENERGY, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–212	KOCH GATEWAY PIPELINE CO.	GRAHAM ENERGY MARKETING CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–213	KOCH GATEWAY PIPELINE CO.	BRIDGEGAS U.S.A. INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–214	KOCH GATEWAY PIPELINE CO.	BG EXPLORATION AMERICA, INC.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–215	KOCH GATEWAY PIPELINE CO.	MITCHELL ENERGY CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–216	KOCH GATEWAY PIPELINE CO.	KRUPP & ASSOCIATES.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–217	KOCH GATEWAY PIPELINE CO.	ENSERCH GAS CO	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–218	KOCH GATEWAY PIPELINE CO.	ENDEVCO INCUSTRIAL GAS SALE CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–219	KOCH GATEWAY PIPELINE CO.	ENMARK GAS CORP .	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–220	KOCH GATEWAY PIPELINE CO.	KOGAS, INC	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–221	KOCH GATEWAY PIPELINE CO.	COKINOS NATURAL GAS TRADING CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–222	KOCH GATEWAY PIPELINE CO.	MARATHON OIL CO ...	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–223	KOCH GATEWAY PIPELINE CO.	RICHARDSON PRODUCTS CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–224	KOCH GATEWAY PIPELINE CO.	TEXACO, INC	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–225	KOCH GATEWAY PIPELINE CO.	ACCESS ENERGY CORP.	10–14–94	G–S	N/A	N	I	10–01–94	03–31–96
ST95–226	KOCH GATEWAY PIPELINE CO.	TXG GAS MARKETING CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–227	KOCH GATEWAY PIPELINE CO.	TEJAS POWER CORP	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–228	KOCH GATEWAY PIPELINE CO.	POGO PRODUCTING CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–229	KOCH GATEWAY PIPELINE CO.	EASTEX GAS TRANSMISSION CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–230	KOCH GATEWAY PIPELINE CO.	DOW INTRASTATE GAS CO.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–231	KOCH GATEWAY PIPELINE CO.	CORBA OIL & GAS CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF
ST95–232	KOCH GATEWAY PIPELINE CO.	NNESTE TRADING (USA) INC., A/F NESTE.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–233	KOCH GATEWAY PIPELINE CO.	MIDCON GAS SERVICES CORP.	10–14–94	G–S	N/A	N	I	10–01–94	INDEF.
ST95–234	ONG TRANSMISSION CO.	ANR PIPELINE CO	10–17–94	C	20,000	N	I	09–27–94	INDEF.
ST95–235	ONG TRANSMISSION CO.	PANHANDLE EASTERN PIPELINE CO.	10–17–94	C	20,000	N	I	09–01–94	INDEF.
ST95–236	ONG TRANSMISSION CO.	ANR PIPELINE CO	10–17–94	C	50,000	N	I	10–14–94	INDEF.
ST95–237	TEJAS GAS PIPELINE CO.	HOUSTON LIGHTING & POWER CO.	10–17–94	G–I	39,000	N	I	07–20–94	INDEF.
ST95–238	ENOGEX INC	ANR PIPELINE CO	10–17–94	C	15,000	N	I	09–24–94	INDEF.
ST95–239	ENOGEX INC	NORAM GAS TRANSMISSION CO.	10–17–94	C	15,000	N	I	09–30–94	INDEF.
ST95–240	EL PASO NATURAL GAS CO.	TENNECO GAS MARKETING CO.	10–17–94	G–S	103,000	N	I	09–24–94	INDEF.
ST95–241	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF OHIO, INC.	10–17–94	B	1,000	Y	F	10–15–94	INDEF.
ST95–242	KOCH GATEWAY PIPELINE CO.	AKZO CHEMICAL, INC	10–18–94	G–S	N/A	N	I	09–20–94	INDEF.
ST95–243	NATIONAL FUEL GAS SUPPLY CORP.	IROQUOIS ENERGY MANAGEMENT, INC.	10–19–94	G–S	10,000	N	I	09–24–94	09–17–94
ST95–244	NATURAL GAS P/L CO. OF AMERICA.	SHELL GAS TRADING CO.	10–19–94	G–S	150,000	N	I	10–01–94	INDEF.
ST95–245	NATURAL GAS P/L CO. OF AMERICA.	TENNGASCO CORP ...	10–19–94	G–S	60,000	N	I	10–01–94	INDEF.
ST95–246	HIGH ISLAND OFFSHORE SYSTEM.	COASTAL GAS MARKETING CO.	10–19–94	K–S	2,000	A	F	10–02–94	10–31–94
ST95–247	HIGH ISLAND OFFSHORE SYSTEM.	ASSOCIATED GAS SERVICES, INC.	10–19–94	K–S	6,139	N	F	10–01–94	10–29–94
ST95–248	HIGH ISLAND OFFSHORE SYSTEM.	NOBLE GAS MARKETING, INC.	10–19–94	K–S	40,000	N	I	10–01–94	INDEF.
ST95–249	U–T OFFSHORE SYSTEM.	COAST ENERGY GROUP.	10–19–94	K–S	60,000	N	F	10–01–94	10–31–94
ST95–250	U–T OFFSHORE SYSTEM.	CNG PRODUCING CO	10–19–94	K–S	42,500	N	F	10–01–94	10–31–94
ST95–251	U–T OFFSHORE SYSTEM.	VASTAR GAS MARKETING, INC.	10–19–94	K–S	21,000	N	F	10–01–94	10–31–94
ST95–252	U–T OFFSHORE SYSTEM.	MOBILE NATURAL GAS INC.	10–19–94	K–S	10,000	N	F	10–01–94	10–31–94
ST95–253	U–T OFFSHORE SYSTEM.	TRANSCO GAS MARKETING CO., AS AGENT.	10–19–94	K–S	4,936	N	F	10–04–94	10–31–94
ST95–254	U–T OFFSHORE SYSTEM.	TRANSCO GAS MARKETING CO., AS AGENT.	10–19–94	K–S	4,561	N	F	10–04–94	10–31–94
ST95–255	VIKING GAS TRANSMISSION CO.	COASTAL GAS MARKETING.	10–19–94	G–S	3,715	N	F	09–01–94	09–30–94
ST95–256	VIKING GAS TRANSMISSION CO.	CENERGY, INC	10–19–94	G–S	3,900	N	F	10–01–94	10–31–94
ST95–257	COLORADO INTERSTATE GAS CO.	SNYDER OIL CORP ...	10–19–94	G–S	3,950	N	F	10–04–94	03–31–95
ST95–258	ROCKY MOUTAIN NATURAL GAS CO.	NORTHWEST PIPELINE CORP.	10–21–94	G–HT	10,000	N	I	09–07–94	INDEF.
ST95–259	ROCKY MOUNTAIN NATURAL GAS CO.	NORTHWEST PIPELINE CORP.	10–21–94	G–HT	2,500	N	I	05–01–94	INDEF.
ST95–260	TENNESSEE GAS PIPELINE CO.	PITTSBURGH CORNING CORP.	10–21–94	G–S	300	N	F	10–01–94	INDEF.

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ST95–261	NATURAL GAS P/L CO. OF AMERICA.	CARGILL, CORN MILLING.	10–21–94	G–S	7,200	N	F	10–01–94	11–30–99
ST95–262	PANHANDLE EASTERN PIPE LINE CO.	TWISTER TRANSMISSION CO.	10–21–94	G–S	80,000	N	I	09–01–94	04–30–98
ST95–263	PANHANDLE EASTERN PIPE LINE CO.	COWEST ENERGY	10–21–94	G–S	15,000	N	I	09–01–94	08–31–96
ST95–264	PANHANDLE EASTERN PIPE LINE CO.	NATIONAL STEEL CORP.	10–21–94	G–S	87,000	N	I	09–12–94	04–30–98
ST95–265	PANHANDLE EASTERN PIPE LINCE CO.	ENRON GAS MARKETING, INC..	10–21–94	G–S	10,000	N	F	10–01–94	03–31–95
ST95–266	PANHANDLE EASTERN PIPE LINE CO.	A.E. STALEY	10–21–94	G–S	4,500	N	F	10–01–94	09–30–97
ST95–267	PANHANDLE EASTERN PIPE LINE CO.	HAEGER POTTERIES OF MACOMB, INC.	10–21–94	G–S	350	N	I	10–01–94	04–30–98
ST95–268	VALERO TRANSMISSION, L.P.	TEXAS GAS TRANSMISSION CORP.	10–24–94	C	2,000	N	I	10–01–94	INDEF.
ST95–269	VALERO TRANSMISSION, L.P.	TRANSWESTERN PIPELINE CO., ET AL.	10–24–94	C	30,000	N	I	09–29–94	INDEF.
ST95–270	VALERO TRANMISSION, L.P.	FLORIDA GAS TRANSMISSION CO., ET AL.	10–24–94	C	11,000	N	I	10–01–94	INDEF.
ST95–271	VALERO TRANSMISSION, L.P.	TRANSWESTERN PIPELINE CO., ET AL.	10–24–94	C	50,000	N	I	10–01–94	INDEF.
ST95–272	TRANSTEXAS PIPELINE.	TRANSWESTERN PIPELINE CO., ET AL.	10–24–94	C	50,000	N	I	10–01–94	INDEF.
ST95–273	ORANGE AND ROCKLAND UTIL., INC.	NATIONAL FUEL RESOURCES, INC.	10–24–94	G–LT	5,000	N	I	09–24–94	01–31–95
ST95–274	MICHIGAN GAS STORAGE CO.	CONSUMERS POWER CO.	10–24–94	B	24,000	Y	I	09–01–94	INDEF.
ST95–275	CONSUMERS POWER CO.	MICHIGAN GAS STORAGE CO., ET AL.	10–24–94	C	24,000	N	I	09–01–94	INDEF.
ST95–276	TEJAS GAS PIPELINE CO.	TEXAS EASTERN TRANSMISSION CORP.	10–24–94	C	40,000	N	I	09–22–94	INDEF.
ST95–277	TEJAS GAS PIPELINE CO.	NORTHERN NATURAL GAS CO.	10–24–94	C	25,000	N	I	09–01–94	INDEF.
ST95–278	PANHANDLE EASTERN PIPE LINE CO.	STAND ENERGY	10–24–94	G–S	160	N	I	10–01–94	08–31–95
ST95–279	PANHANDLE EASTERN PIPE LINE CO.	TEXACO GAS MARKETING, INC.	10–24–94	G–S	15,000	N	I	10–01–94	09–01–96
ST95–280	PANHANDLE EASTERN PIPE LINE CO.	COASTAL GAS MARKETING CO.	10–24–94	G–S	10,208	N	F	10–01–94	12–31–94
ST95–281	PANHANDLE EASTERN PIPE LINE CO.	NATURAL GAS CLEARINGHOUSE.	10–24–94	G–S	16,465	N	F	10–01–94	12–31–94
ST95–282	PANHANDLE EASTERN PIPE LINE CO.	CENTANA GATHERING CO.	10–24–94	G–S	25,000	Y	I	10–01–94	09–30–96
ST95–283	PANHANDLE EASTERN PIPE LINE CO.	AMGAS, INC	10–24–94	G–S	6,000	N	I	09–25–94	09–24–96
ST95–284	PANHANDLE EASTERN PIPE LINE CO.	AMOCO ENERGY TRADING CORP.	10–24–94	G–S	86,000	N	I	10–01–94	04–30–98
ST95–285	CNG TRANSMISSION CORP.	PITTSBURGH TUBE CO.	10–24–94	G–S	350	N	I	10–01–94	11–30–94
ST95–286	CNG TRANSMISSION CORP.	POWER GAS MARKETING & TRANS.	10–24–94	G–S	1,000	N	I	10–01–94	11–30–94
ST95–287	FLORIDA GAS TRANSMISSION CO.	CITRUS MARKETING, INC.	10–24–94	G–S	600,000	A	I	09–23–94	INDEF.
ST95–288	NORTHERN NATURAL GAS CO.	WATERTOWN MUNICIPAL UTILITIES DEPT.	10–25–94	B/G–S	2,000	N	F	10–01–94	INDEF.
ST95–289	NORTHERN NATURAL GAS CO.	U.S. GYPSUM, INC	10–25–94	G–S	7,900	N	F	10–01–94	09–29–95
ST95–290	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO., ET AL.	10–25–94	C	500,000	Y	I	10–01–94	INDEF.
ST95–291	TENNESSEE GAS PIPELINE CO.	COLUMBIA GAS OF OHIO INC.	10–25–94	G–S	30,000	N	F	10–01–94	INDEF.

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ST95–292	TENNESSEE GAS PIPELINE CO.	T.W. PHILLIPS GAS & OIL CO.	10–25–94	G–S	1,195	N	F	10–01–94	INDEF.
ST95–293	TENNESSEE GAS PIPELINE CO.	ORANGE AND ROCKLAND UTILITIES INC.	10–25–94	G–S	12,440	N	F	10–01–94	INDEF.
ST95–294	TENNESSEE GAS PIPELINE CO.	CITY OF HOLYOKE GAS & ELECTRIC DEPT.	10–25–94	G–S	8,802	N	F	10–01–94	INDEF.
ST95–295	TENNESSEE GAS PIPELINE CO.	MOUNTAINEER GAS CO.	10–25–94	G–S	4,825	N	F	10–01–94	INDEF.
ST95–296	TENNESSEE GAS PIPELINE CO.	CINCINNATI GAS AND ELECTRIC CO.	10–25–94	G–S	6,794	N	F	10–01–94	INDEF.
ST95–297	TENNESSEE GAS PIPELINE CO.	VIRGINIA NATURAL GAS INC.	10–25–94	G–S	2,683	N	F	10–01–94	INDEF.
ST95–298	TENNESSEE GAS PIPELINE CO.	CENTRAL HUDSON GAS & ELECTRIC CORP.	10–25–94	G–S	1,479	N	F	10–01–94	INDEF.
ST95–299	TENNESSEE GAS PIPELINE CO.	TEXACO GAS MARKETING INC.	10–25–94	G–S	15,000	N	F	10–01–94	INDEF.
ST95–300	TENNESSEE GAS PIPELINE CO.	PENN FUEL GAS, INC	10–25–94	G–S	1,654	N	F	10–01–94	INDEF.
ST95–301	TENNESSEE GAS PIPELINE CO.	ORANGE AND ROCKLAND UTILITIES INC.	10–25–94	G–S	4,473	N	F	10–01–94	INDEF.
ST95–302	TENNESSEE GAS PIPELINE CO.	CENTRAL HUDSON GAS & ELECTRIC CORP.	10–25–94	G–S	3,197	N	F	10–01–94	INDEF.
ST95–303	MIDWESTERN GAS TRANSMISSION CO.	TENNECO GAS MARKETING CO.	10–25–94	G–S	10,000	N	F	10–01–94	INDEF.
ST95–304	MIDWESTERN GAS TRANSMISSION CO.	H&N GAS, LTD	10–25–94	G–S	6,700	N	F	10–01–94	INDEF.
ST95–305	TEXAS GAS TRANSMISSION CORP.	ALCAN ALUMINUM CORP.	10–25–94	G–S	10,000	N	I	10–07–94	INDEF.
ST95–306	NORTHERN ILLINOIS GAS CO.	NATURAL GAS P/L CO. OF AM., ET AL.	10–25–94	G–LT	25,000	N	I	10–01–94	10–10–94
ST95–307	PANHANDLE EASTERN PIPE LINE CO.	TENASKA MARKETING VENTURES.	10–25–94	G–S	6,553	N	F	10–01–94	10–31–94
ST95–308	PANHANDLE EASTERN PIPE LINE CO.	AQUILA ENERGY MARKETING CORP.	10–25–94	G–S	6,553	N	F	10–01–94	10–31–94
ST95–309	PANHANDLE EASTERN PIPE LINE CO.	NATURAL GAS CLEARINGHOUSE.	10–25–94	G–S	6,587	N	F	10–01–94	12–31–94
ST95–310	PANHANDLE EASTERN PIPE LINE CO.	COASTAL GAS MARKETING CO.	10–25–94	G–S	341	N	F	10–01–94	10–31–94
ST95–311	COLUMBIA GAS TRANSMISSION CORP.	WESTCOAST GAS SERVICES USA, INC.	10–25–94	G–S	20,000	N	I	10–01–94	INDEF.
ST95–312	SABINE PIPE LINE CO	AIG TRADING CORP ..	10–26–94	G–S	1230,000	N	I	10–06–94	INDEF.
ST95–313	SABINE PIPE LINE CO	CENTANA ENERGY MARKETING CO.	10–26–94	G–S	100,000	N	I	10–01–94	INDEF.
ST95–314	SABINE PIPE LINE CO	KCS ENERGY MARKETING, INC.	10–26–94	G–S	100,000	N	I	10–06–94	INDEF.
ST95–315	MIDWESTERN GAS TRANSMISSION CO.	COASTAL GAS MARKETING CO.	10–26–94	G–S	36,615	N	F	10–12–94	INDEF.
ST95–316	MIDWESTERN GAS TRANSMISSION CO.	MOBIL NATURAL GAS INC.	10–26–94	G–S	12,900	N	F	10–01–94	INDEF.
ST95–317	TENNESSEE GAS PIPELINE CO.	BELDEN & BLAKE CORP.	10–26–94	G–S	3,100	N	F	10–01–94	INDEF.
ST95–318	TENNESSEE GAS PIPELINE CO.	COLUMBIA GAS OF PENNSYLVANIA, INC.	10–26–94	G–S	43,430	N	F	10–01–94	INDEF.
ST95–319	TRUNKLINE GAS CO .	UTILICORP UNITED, INC.	10–26–94	G–S	7,070	N	F	10–01–94	INDEF.
ST95–320	TRUNKLINE GAS CO .	NORCEN EXPLORER, INC.	10–26–94	G–S	75,000	N	I	10–01–94	INDEF.
ST95–321	TRUNKLINE GAS CO .	NATURAL GAS RESOURCES, LP.	10–26–94	G–S	10,000	N	I	10–01–94	INDEF.
ST95–323	ALABAMA-TENNESSEE NAT. GAS CO.	CITY OF TUSCUMBIA	10–26–94	B	2,231	N	F	10–01–94	04–01–98
ST95–324	PANHANDLE EASTERN PIPE LINE CO.	ANADARKO TRADING CO.	10–27–94	G–S	231,000	N	F	10–01–94	11–30–95

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ST95–325	NATURAL GAS P/L CO. OF AMERICA	CHANNEL INDUSTRIES GAS CO.	10–27–94	G–S	50,000	N	F	10–01–94	10–09–94
ST95–326	TRANSCONTINENTAL GAS P/L CORP.	TAYLOR ENERGY CO	10–27–94	G–S	10,000	N	I	10–01–94	INDEF.
ST95–327	TRANSCONTINENTAL GAS P/L CORP.	SUN GAS SERVICES	10–27–94	G–S	100,000	N	I	10–01–94	INDEF.
ST95–328	TRANSCONTINENTAL GAS P/L CORP.	DELHI GAS MARKETING CORP.	10–27–94	G–S	150,000	N	i	10–01–94	INDEF.
ST95–329	TRANSCONTINENTAL GAS P/L CORP.	CNG GAS SERVICES CORP.	10–27–94	G–S	50,000	N	i	10–07–94	INDEF.
ST95–330	DELHI GAS PIPELINE CORP.	ANR PIPELINE CO., ET AL.	10–27–94	C	500	N	I	10–02–94	INDEF.
ST95–331	TRANSCONTINENTAL GAS P/L CORP.	ALABAMA GAS CORP.—THOMASTON.	10–27–94	G–S	230	N	F	10–03–94	10–31–13
ST95–332	TRANSCONTINENTAL GAS P/L CORP.	CABOT OIL & GAS TRADING CORP.	10–27–94	G–S	6,000	N	I	10–01–94	INDEF.
ST95–333	TRANSCONTINENTAL GAS P/L CORP.	EAGLE NATURAL GAS CO.	10–27–94	G–S	20,000	N	I	10–01–94	INDEF.
ST95–334	TRANSCONTINENTAL GAS P/L CORP.	CENERGY, INC	10–27–94	G–S	60,000	N	I	10–01–94	INDEF.
ST95–335	MISSISSIPPI RIVER TRANS. CORP.	INTERENERGY GAS SERVICES CORP.	10–27–94	G–S	100,000	Y	I	09–02–94	INDEF.
ST95–336	WILLIAMS NATURAL GAS CO.	ASSOCIATED PURCHASING SERVICE, INC.	10–27–94	G–S	20,000	N	I	10–01–94	INDEF.
ST95–337	WILLIAMS NATURAL GAS CO.	KANSAS INDUSTRIAL ENERGY SUPPLY CO.	10–27–94	G–S	2,000	N	F	10–01–94	10–01–95
ST95–338	WILLIAMS NATURAL GAS CO.	ASSOCIATED PURCHASING SERVICE, INC.	10–27–94	G–S	1,500	N	F	10–01–94	10–01–95
ST95–339	EL PASO NATURAL GAS CO.	CHEVRON U.S.A., INC	10–27–94	G–S	25,000	N	F	10–01–94	09–30–96
ST95–340	EL PASO NATURAL GAS CO.	WESTERN GAS RESOURCES, INC.	10–27–94	G–S	103,000	N	I	09–03–94	INDEF.
ST95–341	TENNESSEE GAS PIPELINE CO.	CHEVRON U.S.A., INC	10–28–94	G–S	60,000	N	I	10–12–94	INDEF.
ST95–342	MIDWESTERN GAS TRANSMISSION CO.	ASSOCIATED NATURAL GAS, INC.	10–28–94	G–S	9,000	N	F	10–14–94	INDEF.
ST95–343	TEXAS EASTERN TRANSMISSION CORP.	TAUBER OIL CO	10–28–94	G–S	50,000	N	I	10–01–94	INDEF.
ST95–344	TEXAS EASTERN TRANSMISSION CORP.	TAUBER OIL CO	10–28–94	G–S	50,000	N	I	10–01–94	INDEF
ST95–345	TEXAS EASTERN TRANSMISSION CORP.	COLUMBIA ENERGY SERVICES CORP.	10–28–94	G–S	50,000	N	I	10–02–94	INDEF.
ST95–346	TEXAS EASTERN TRANSMISSION CORP.	COLUMBIA ENERGY SERVICES CORP.	10–28–94	G–S	50,000	N	I	10–02–94	INDEF.
ST95–347	TEXAS EASTERN TRANSMISSION CORP.	CONSOLIDATED EDISON CO OF NY, INC.	10–28–94	G–S	77,663	N	F	10–01–94	INDEF.
ST95–348	TEXAS EASTERN TRANSMISSION CORP.	COLONIAL GAS CO	10–28–94	G–S	104	N	F	10–01–94	INDEF.
ST95–349	TEXAS EASTERN TRANSMISSION CORP.	PERRY GAS COMPANIES INC.	10–28–94	G–S	3,000	N	I	10–01–94	INDEF.
ST95–350	TEXAS EASTERN TRANSMISSION CORP.	COLUMBIA ENERGY SERVICES CORP.	10–28–94	G–S	50,000	N	I	10–01–94	INDEF.
ST95–351	TEXAS EASTERN TRANSMISSION CORP.	COLUMBIA ENERGY SERVICES CORP.	10–28–94	G–S	50,000	N	I	10–02–94	INDEF.
ST95–352	NATURAL GAS P/L CO. OF AMERICA	AMGAS, INC	10–28–94	G–S	40,000	N	F	10–01–94	03–31–96

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–353	NATURAL GAS P/L CO. OF AMERICA	MOBIL NATURAL GAS INC.	10–28–94	G–S	30,000	N	F	10–04–94	10–31–94
ST95–354	NATURAL GAS P/L CO. OF AMERICA	INDUSTRIAL ENERGY APPLICATIONS, INC.	10–28–94	G–S	3,100	N	F	10–01–94	09–30–95
ST95–355	TRAILBLAZER PIPELINE CO.	SNYDER GAS MARKETING, INC.	10–28–94	G–S	10,000	N	F	10–01–94	10–31–94
ST95–356	IROQUOIS GAS TRANS. SYSTEM, L.P.	DGS TRADING, INC	10–28–94	G–S	2,500	N	F	10–04–94	11–01–94
ST95–357	IROQUOIS GAS TRANS. SYSTEM, L.P.	DGS TRADING, INC	10–28–94	G–S	14,000	N	F	10–08–94	11–01–94
ST95–358	IROQUOIS GAS TRANS. SYSTEM, L.P.	COENERGY TRADING CO.	10–28–94	G–S	100,000	N	I	10–18–94	10–31–95
ST95–359	IROQUOIS GAS TRANS. SYSTEM, L.P.	CONNECTICUT LIGHT & POWER CO.	10–28–94	G–S	27,699	N	F	10–08–94	11–01–94
ST95–360	COLUMBIA GAS TRANSMISSION CORP.	1564 E. LANCASTER AVE. BUS. TRUST.	10–28–94	G–S	N/A	N	I	09–02–94	INDEF.
ST95–361	COLUMBIA GAS TRANSMISSION CORP.	BETHLEHEM STEEL CORP.	10–28–94	G–S	N/A	N	I	07–01–94	INDEF.
ST95–362	TRANSOK, INC	ANR PIPELINE CO., ET AL.	10–31–94	C	5,000	N	I	10–08–94	INDEF.
ST95–363	MIDCON TEXAS PIPELINE CORP.	CARGILL, INC	10–31–94	G–I	20,000	N	I	10–12–94	INDEF.
ST95–364	NATURAL GAS P/L CO. OF AMERICA	COASTAL GAS MARKETING CO.	10–31–94	G–S	5,000	N	F	10–01–94	10–31–94
ST95–365	NATURAL GAS P/L CO. OF AMERICA	HADSON GAS SYSTEMS, INC.	10–31–94	G–S	11,000	N	F	10–01–94	11–30–98
ST95–366	GREAT LAKES GAS TRANS. L.P.	KIMBALL/TRIPPE ENERGY ASSOCIATES.	10–31–94	G–S	15,000	N	F	10–01–94	10–31–94
ST95–367	MID LOUISIANA GAS CO.	MID LOUISIANA MARKETING CO.	10–31–94	G–S	15,464	A	F	10–01–94	09–30–95
ST95–368	WILLISTON BASIN INTER. P/L CO.	TEXAS GAS MARKETING, INC.	10–31–94	G–S	87,000	A	I	10–01–94	09–30–96
ST95–369	WILLISTON BASIN INTER. P/L CO.	CENERGY, INC	10–31–94	G–S	30,000	A	I	10–01–94	09–30–96
ST95–370	WILLISTON BASIN INTER. P/L CO.	RAINBOW GAS CO	10–31–94	G–S	472	A	F	10–01–94	10–31–94
ST95–371	WILLISTON BASIN INTER. P/L CO.	S.D. STATE CEMENT PLANT.	10–31–94	G–S	542	A	F	10–01–94	09–30–96
ST95–372	WILLISTON BASIN INTER. P/L CO.	WBI GAS SERVICES	10–31–94	G–S	30,000	A	I	10–01–94	09–30–96
ST95–373	WILLISTON BASIN INTER. P/L CO.	MONTANA-DAKOTA UTILITIES CO.	10–31–94	B	232,193	A	F	10–01–94	06–30–97
ST95–374	FLORIDA GAS TRANSMISSION CO.	SWIFT ENERGY CO	10–31–94	G–S	2,500	N	I	10–01–94	INDEF.
ST95–375	FLORIDA GAS TRANSMISSION CO.	VASTAR GAS MARKETING, INC.	10–31–94	G–S	100,000	N	I	10–01–94	INDEF.
ST95–376	CARNEGIE NATURAL GAS CO.	SNYDER BROTHERS, INC.	10–31–94	G–S	5,000	N	I	03–18–94	INDEF.
ST95–377	CARNEGIE NATURAL GAS CO.	KRIEBEL GAS, INC	10–31–94	G–S	2,000	N	I	10–04–94	INDEF.
ST95–378	CARNEGIE NATURAL GAS CO.	GASCO, INC	10–31–94	G–S	5,000	N	I	10–01–94	INDEF.
ST95–379	MISSISSIPPI RIVER TRANS. CORP.	HUNT PETROLEUM CORP.	10–31–94	G–S	300,000	Y	I	10–01–94	INDEF.
ST95–380	MISSISSIPPI RIVER TRANS. CORP.	CITY OF WATERLOO	10–31–94	G–S	200	N	F	10–01–94	INDEF.
ST95–381	MISSISSIPPI RIVER TRANS. CORP.	CATEX VITOL GAS, INC.	10–31–94	G–S	10,000	N	I	10–01–94	INDEF.
ST95–382	EL PASO NATURAL GAS CO.	ASSOCIATED GAS SERVICES, INC.	10–31–94	G–S	103,000	N	I	10–01–94	INDEF.
ST95–383	EL PASO NATURAL GAS CO.	GEDI, INC	10–31–94	G–S	3,275	N	I	10–01–94	INDEF.
ST95–384	SOUTHERN NATURAL GAS CO.	RIVERWOOD INTERNATIONAL CORP.	10–31–94	G–S	1,200	N	F	10–18–94	10–31–97

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–385	SOUTHERN NATURAL GAS CO.	ATLANTA GAS LIGHT CO.	10–31–94	G–S	100,000	N	F	09–23–94	06–30–97
ST95–386	SOUTHERN NATURAL GAS CO.	ENGELHARD CORP ...	10–31–94	G–S	5,000	N	I	10–13–94	INDEF.
ST95–387	SOUTHERN NATURAL GAS CO.	SOUTH CAROLINA PIPELINE CORP.	10–31–94	G–S	28,000	N	F	10–02–94	07–31–97
ST95–388	SOUTHERN NATURAL GAS CO.	SONAT MARKETING, ET AL.	10–31–94	G–S	3,625	A	F	10–01–94	03–31–95

[1] NOTICE OF TRANSACTIONS DOES NOT CONSTITUTE A DETERMINATION THAT FILINGS COMPLY WITH COMMISSION REGULATIONS IN ACCORDANCE WITH ORDER NO. 436 (FINAL RULE AND NOTICE REQUESTING SUPPLEMENTAL COMMENTS, 50 FR 42,372, 10/10/85).

[2] ESTIMATED MAXIMUM DAILY VOLUMES INCLUDES VOLUMES REPORTED BY THE FILING COMPANY IN MMBTU, MCF AND DT.

[3] AFFILIATION OF REPORTING COMPANY TO ENTITIES INVOLVED IN THE TRANSACTION. A "Y" INDICATES AFFILIATION, AN "A" INDICATES MARKETING AFFILIATION, AND A "N" INDICATES NO AFFILIATION.

[FR Doc. 94–30060 Filed 12–6–94; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30366A; FRL–4918–4]

Mole Med Inc.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Mole-Med, a mole repellent containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6600).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 29, 1994 (59 FR 33505), which announced that Mole Med Inc., P.O. Box 333, Aurora, IN 47001, had submitted an application to register the pesticide product Mole-Med (EPA File Symbol 64439–R), containing the active ingredient castor oil (CAS No. 8001–79–4) at 66 percent, an active ingredient not included in any previously registered product.

The application was approved on August 3, 1994, as Mole-Med, to repel moles from lawns (EPA Registration Number 64439–1).

This registration is unconditional for 1–year. During that period the registrant will submit more information on product effectiveness. If this requirement is not satisfied by August 15, 1995, EPA will automatically cancel the registration.

The Agency has considered all required data on risks associated with the proposed use of castor oil, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of castor oil when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: November 20, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–29973 Filed 12–6–94; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Savino Del Bene International Freight Forwarders, Incorporated, 151 Everett Ave., suite 105, Chelsea, MA 02150. Officer: Melvin Cariofiles, President.

Computer Logistics Services Inc., 31746 Enterprise Drive, Livonia, MI 48150. Officers: Richard Hanschu, President; Kelly M. Woolley, Asst. Secretary.

Solano International, 347 Third Ave., Bellmawr, NJ 08031. Paula Solano, Sole Proprietor.

Blanco Forwarders, Inc., 1325 NW 93rd Ave., Miami, FL 33172. Officers: Eduardo Blanco, President; Rebeca Blanco, Vice President.

RHE Specialty Transport, Inc., 123 Pennsylvania Ave., South Kearny, NJ

07032. Officer: Oscar S. Lara, President.

Dated: December 1, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–30038 Filed 12–6–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Community First BancShares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 29, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Community First BancShares, Inc., Forest, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Community First Bank, N.A., Forest, Ohio.

2. Heritage Bancorp, Inc., Burlington, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank, Inc., Burlington, Kentucky.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CNB Bancshares, Inc., Evansville, Indiana; to acquire 100 percent of the voting shares of The Bank of Orleans, Orleans, Indiana.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Longview Capital Corporation, Newman, Illinois; to acquire 100 percent of the voting shares of First Prairie Bankshares, Inc., Georgetown, Illinois, and thereby indirectly acquire The First National Bank of Georgetown, Georgetown, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. The Aurora Holding Company, Aurora, Minnesota; to become a bank holding company by acquiring at least 95.6 percent of the voting shares of State Bank of Aurora, Aurora, Minnesota.

Board of Governors of the Federal Reserve System, December 1, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–30041 Filed 12–6–94; 8:45 am]

BILLING CODE 6210–01–F

Firstar Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstar Corporation, Milwaukee, Wisconsin, and Firstar Corporation of Minnesota, Bloomington, Minnesota; to acquire 100 percent of the voting shares of Investors Savings Bank, F.S.B., Wayzata, Minnesota. Investors Savings Bank, F.S.B. is in the process of conversion to a national bank.

In connection with this application, Applicants also has applied to acquire Investors Insurance Agency, Inc., Wayzata, Minnesota, and thereby engage in insurance agency activities, pursuant to § 225.25(b)(8)(vii), including the provision of title insurance services as an agent and securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 1, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–30042 Filed 12–6–94; 8:45 am]

BILLING CODE 6210–01–F

The Industrial Bank of Japan, Limited, Tokyo, Japan; Application to Engage in Nonbanking Activities

The Industrial Bank of Japan, Limited, Tokyo, Japan (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to purchase Aubrey G. Lanston & Co., Inc., New York, New York (Company), from Applicant's subsidiary bank, IBJ Schroder Bank & Trust Company, New York, New York,

and thereby engage in the following activities: 1) executing and clearing, clearing without executing, executing without clearing, purchasing and selling through the use of omnibus trading accounts, and providing investment advisory services to institutional customers with respect to previously approved futures and options on futures contracts on financial commodities; 2) providing investment advice pursuant to 12 CFR 225.25(b)(4); 3) underwriting and dealing in securities as permitted by 12 CFR 225.25(b)(16); 4) trading foreign exchange in the spot market for nonhedging purposes; 5) trading over the counter options on U.S. Treasury securities for nonhedging purposes; 6) trading options, futures, options on futures and forward contracts in accordance with 225.142 to hedge foreign exchange and securities positions; and 7) acting as an agent for affiliates in the purchase and sale of over the counter interest rate contracts, including swaps, forwards, options (including caps, collars and floors), and any other instrument that gives rise to similar credit risks, and providing the above-listed futures commission merchant services to affiliates. The activities will be conducted on a worldwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

Applicant states that the Board previously has determined by order or regulation that all of the proposed activities are closely related to banking. *See Northern Trust*, 79 Federal Reserve Bulletin 723 (1994) and *J.P. Morgan & Co. Incorporated*, 80 Federal Reserve Bulletin 151 (1994)(providing investment advisory, execution, clearance, and execution and clearance services with respect to futures and options on futures); 12 CFR 225.25(b)(4)(providing investment advisory services); 12 CFR 225.25 (b)(16)(underwriting and dealing in bank-eligible securities); *Swiss Bank Corporation*, 77 Federal Reserve Bulletin 759 (1991)(trading over the counter options on bank-eligible securities for nonhedging purposes); *The Bank of Tokyo*, 76 Federal Reserve Bulletin 654 (1990)(trading foreign exchange in the spot market for nonhedging purposes); 12 CFR 225.142 and *The Long Term Credit Bank, Limited*, 79 Federal Reserve Bulletin 347 (1993)(trading foreign exchange-related and bank-eligible securities-related instruments for hedging purposes in accordance with § 225.142 of Regulation Y). Applicant has stated that Company would conduct the proposed activities in accordance with the limitations and conditions imposed by the Board in its orders and regulations. Applicant also maintains that the proposed activities that it would conduct on behalf of affiliates fall within section 4(c)(1)(C) of the BHC Act.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Applicant believes that the proposal would produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal would produce operational and management efficiencies for Applicant's United States operations. In addition, Applicant states that the proposed activities would not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 23, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, December 1, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–30043 Filed 12–6–94; 8:45 am]

BILLING CODE 6210–01–F

Premier Bankshares Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Premier Bankshares Corporation, Bluefield, Virginia (previously located in Tazewell, Virginia); to engage *de novo* through its subsidiary Premier Trust Company, Bluefield, Virginia, in performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 1, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–30044 Filed 12–6–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Availability of the Seventh Annual Report on Carcinogens

The HHS' National Toxicology Program (NTP) today announces the availability of the Seventh Annual Report on Carcinogens.

The Annual Report on Carcinogens, prepared by the National Toxicology Program (NTP), U.S. Public Health Service, is issued by the Secretary of the Department of Health Service, (DHHS) pursuant to an amendment to the Public Health Service Act (section 262, Pub. L. 95–622) which requires the Secretary to publish an annual report that contains "a list of all substances (i) which either are known to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed * * *." The law also states that the reports should provide available information on the nature of exposures, the estimated numbers of persons exposed, and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

For the purpose of the Report, "known" carcinogens are defined as those substances for which the evidence from human studies indicates that there is causal relationship between exposure to the substance and human cancer. Substances "which may reasonably be anticipated to be carcinogens" are defined as those for which there is limited evidence of carcinogenicity in humans or sufficient evidence of carcinogenicity in experimental animals.

Substances in the above categories, for which potential exposure of persons residing in the United States has been demonstrated, are included in the Report. The Seventh Annual Report does not contain all known carcinogens or substances reasonably anticipated to be carcinogens. Additional substances with identified carcinogenic properties as defined above will be included in subsequent Annual Reports.

New entries in the Seventh Annual Report were chosen from those designated by the agencies participating in the preparation of the Report, from those tested within the National Toxicology Program and the National Cancer Institute Carcinogenesis Bioassay Program; or from those evaluated by the International Agency for Research on Cancer (IARC), a component of the World Health Organization (WHO), located in Lyon, France.

The Seventh Annual Report on Carcinogens Summary does not contain specific information on regulations promulgated by regulatory health agencies. In most other respects, the information is the same as that in the full report. Copies will be sent automatically to those on the mailing list; others may request a single copy without charge by writing the NTP Central Data Management, MD A0–02, P.O. Box 12233, Research Triangle Park, NC 27709.

Copies of the complete Report are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Tel: 800–553–6847. There is a $105.00 charge for the document plus a $8.00 per order shipping and handling charge. Ask for Report No. PB 95–109781 when ordering.

Comments on the Seventh Annual Report on Carcinogens are welcome. Corrections, suggestions, or any additional information should be addressed to Annual Reports on Carcinogens, NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: November 29, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–30022 Filed 12–6–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences: Validation and Acceptance of Alternative Testing Methods: Request for Comments

Introduction

Section 1301 of the National Institutes of Health Revitalization Act of 1993 (Public Law No. 103–43) directed the National Institute of Environmental Health Sciences (NIEHS) to establish an Applied Toxicological Research and Testing Program to conduct applied research and testing regarding toxicology. The Act specified that the toxicology-related activities to be carried out by the program would include: (i) Establishing criteria for the validation and regulatory acceptance of alternative testing methods; and (ii) recommending a process through which scientifically validated alternative methods can be accepted for regulatory use. The purpose of this announcement is to invite interested parties to provide information for consideration in the formulation of these criteria and processes.

Background

In response to the directives in Public Law No. 103–43, the NIEHS has established the ad hoc Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) to develop recommendations relating to the validation and acceptance of new and revised testing methods that would be useful to Federal agencies. Many new and revised test methods represent alternative methods, models, and approaches in that they: (a) Result in the reduction of the total number of animals required in a test; (b) incorporate refinements of procedures to lessen or eliminate pain or distress to animals; or (c) provide for the partial or total replacement of animals with non-animal systems, or the replacement of one animal species with another (e.g., a mammalian species replaced by a nonmammalian or invertebrate species).

The Committee's goals include recommending criteria and processes that will: (1) Encourage the development of new methods and improvement of existing test methods to generate data useful for risk assessment; (2) lead to the scientific validation of new and improved test methods; (3) increase the likelihood of regulatory acceptance of scientifically valid new test methods; and (4) encourage the refinement and reduction of animal use in testing, and the replacement of animals with non-animal methods and/or phylogenetically lower species, when scientifically feasible.

Action

Comments and information are invited from interested parties regarding criteria for the validation and acceptance of alternative testing methods, and processes for the regulatory acceptance of scientifically validated alternative methods. Information is sought regarding the following broad topics:

Types of information necessary to evaluate the practical utility of a test method;

Essential components and processes applicable to the validation of test methods;

Principles and criteria for assessing the validity of a test method; i.e., do considerations vary depending upon whether the test is: (a) *in vivo* vs. *in vitro;* (b) a screen or a replacement; or (c) mechanistically-based or not;

Factors relevant to the acceptance of validated test methods by regulatory and scientific agencies.

The Committee will consider such comments and information prior to the preparation of a draft document. Opportunity for comment on the Committee's draft document will be announced at a later date, and a public meeting will also be announced.

Comments and information should be sent within 60 days of the publication of this announcement to Dr. William Stokes, NIEHS, MD–A2–05, P.O. Box 12233, Research Triangle Park, North Carolina 27709. For further information regarding this request, please contact Dr. Stokes by mail at the above address, by FAX at 919/541–0719, by telephone at 919/541–7997, or by Internet e-mail at Stokes@NIEHS.NIH.GOV.

Dated: November 29, 1994.

Richard A. Griesemer,

Deputy Director, NIEHS.

[FR Doc. 94–30023 Filed 12–6–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–796018

Applicant: W.R. Thompson, Jr., Three Rivers, MI,

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) taken from the captive herd maintained by Mr. H. Kock, Cape Province, Republic of South Africa, for enhancement of the species.

PRT–796631

Applicant: Robert Zink, Bell Museum, University of Minnesota, St. Paul, MN

The applicant requests a permit to import study skins, tissue samples and skeletons from 25 California gnatcatchers (*Polioptila californica californica*) to be collected in Baja California, Mexico for the purpose of scientific study including DNA analysis.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 2, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–30083 Filed 12–6–94; 8:45 am]

BILLING CODE 4310–55–P

Convention on International Trade in Endangered Species (CITES) Notification; Recommendations From CITES Secretariat on Prohibitions of Trade in Certain Animal Species From Twelve Countries

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information No. 23.

SUMMARY: This is a schedule III notice. Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States. Violators may also be subject to criminal or civil prosecution. On April 21, 1994, the CITES Secretariat issued Notification to the Parties No. 800 urging the Parties to suspend imports of certain animal species from the following twelve countries: Argentina, Azerbaijan, China, India, Indonesia, Latvia, Lithuania, Peru, Republic of Moldova, Togo, Ukraine, and the United Republic of Tanzania. This notification was based on a decision made by the CITES Standing Committee during meeting held in March, 1994, which asked CITES Party countries to suspend imports in certain animal species from the affected countries. This action was required by CITES Resolution Conference 8.9, adopted at the Eighth Meeting of the Conference of the Parties in Kyoto, Japan, in 1992, which established a procedure for developing remedial actions and implementing them through import suspensions, if voluntary compliance by exporting countries is not satisfactory.

DATES: This notice is effective on December 7, 1994. This notice will be effective until further notice. The import measures announced in this notice shall apply to shipments of wildlife which have a date of export fifteen (15) days after the effective date of this Notice.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Chief, or Dr. Susan S. Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Dr., room 420C, Arlington, VA 22203, telephone (703)358–2093, regarding Notification to the Parties No. 800, or Frank S. Shoemaker Jr., Special Agent in Charge, Investigations, U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive., room 500, Arlington, VA 22203, telephone (703)358–1949, for enforcement actions.

SUPPLEMENTARY INFORMATION: Article IV, paragraph 2(a) of the CITES treaty allows commercial and noncommercial trade in species listed in CITES Appendix II, but export permits for such trade may be issued only if a designated Management Authority of the country has determined that the specimens were legally acquired, and if a designated Scientific Authority of that country has advised the Management Authority that the export will not be detrimental to the survival of the species. Article IV, paragraph 3 goes on to require that exports of Appendix II species be limited in any way necessary to ensure that the population level of a species is consistent with that species' role in its ecosystem and that the population level of that species be maintained well above the level where it might qualify for inclusion in Appendix I.

Over the past decade, CITES parties have become increasingly concerned that certain Appendix II species are subject to particularly high volumes of trade without sufficient biological data for Scientific Authorities to make the necessary judgments that exports are not

detrimental to the species, as required by Article IV. In 1983, CITES parties adopted a resolution at the Fourth Conference of the Parties in Gaborone, Botswana, acknowledging that many parties are not effectively implementing Article IV and thus risk losing the benefits of continued availability of these resources. This resolution, Conf. 4.7, established a project to identify Appendix II species involved in significant levels of international trade, and to develop and negotiate with exporting and importing countries whatever measures were necessary to bring trade down to levels consistent with Article IV.

In 1987, at the Sixth Conference of the Parties in Ottawa, Canada, parties charged the newly established CITES Animals Committee with the task of establishing a list of Appendix II species being significantly affected by trade, reviewing all available information, and formulating remedial measures for these species. The CITES Secretariat coordinated or contracted for studies to develop lists of mammal, bird, and reptile species and collect relevant information about these species, in cooperation with the IUCN World Conservation Union. The U.S. Fish and Wildlife Service (Service) cooperated with and provided financial support for a number of these studies.

At the Eighth Conference of the Parties in 1992, in Kyoto, Japan, CITES parties adopted a resolution developed by the CITES Animals Committee which recognized that substantial trade in wild-caught animals was still going on contrary to the provisions of Article IV, and that necessary remedial measures were not being properly implemented. This resolution, Conf. 8.9, established a formal process for the Animals Committee to develop remedial measures, including "zero quotas" (that is, temporary trade bans) when appropriate; for the Secretariat to communicate these recommendations to the exporting countries; and, where exporting countries do not satisfactorily implement the measures, for the CITES Standing Committee to call on parties to suspend imports of these species from the offending countries until they are in compliance.

During meetings of the Animals Committee in 1992 and 1993, attended by representatives of the Service, remedial measures were developed and subsequently communicated to exporting countries by the Secretariat. The Standing Committee reviewed reports from the Secretariat of compliance and noncompliance with these remedial measures during three meetings in 1993 and 1994. The Service represented the United States in these meetings, with the Department of State. During the last of these meetings, held in Geneva, Switzerland, in March, 1994, the Standing Committee directed the Secretariat to issue a formal notice calling for a suspension of trade in particular Appendix II species from twelve CITES parties.

Accordingly, on April 21, 1994, the Secretariat issued Notification to the Parties number 800, calling for a suspension of imports of these species from the affected countries. Implementation of these restrictions is necessary to stop trade considered to be detrimental to the survival of the species and thus in contravention of the requirements of CITES Article IV. CITES parties failing to implement these trade suspensions would be contributing to the decline of the affected species, and would be subject to formal citation in the CITES Infractions Report and possible censure by the CITES Conference of the Parties.

Pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the U.S. Fish and Wildlife Service is granted the authority to detain, refuse clearance of, or seize any fish or wildlife or plants that are imported into the United States in violation of CITES. Regulations contained in 50 CFR 14.53(c) indicate that refusal of clearance of imported wildlife is warranted if there are reasonable grounds to believe that documentation for the clearance of such wildlife is not valid. Similarly, regulations contained in 50 CFR 23.12(a)(2) require that all imports of Appendix II wildlife into the United States be accompanied by a valid foreign export permit or re-export certificate, unless an exemption applies. The Service agrees with notification to the Parties number 800 and believes that any permits issued for the indicated species by the affected countries are not valid because required findings of "non-detriment" and/or lawful acquisition have not been credibly demonstrated by the exporting countries in light of the significant trade level in particular Appendix II species.

The subjects of this notice are as follows:

A. Subject

Argentina: ban on imports of specimens of guanaco (*Lama guanicoe*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 800, issued on April 21, 1994, calls on Parties to suspend imports of *Lama guanicoe* specimens from Argentina.

Action by the Fish and Wildlife Service

Based on information received, Argentina has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the Management Authority of Argentina must advise the CITES Secretariat of the following: the biological basis for its management program for *Lama guanicoe*, the procedures used for controlling exports of *Lama guanicoe*, and the results of an investigation on reports of undocumented trade in *Lama guanicoe* meat. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of *Lama guanicoe* may be imported into the United States, directly or indirectly, from Argentina, unless an exemption in CITES Article VII applies.

B. Subject:

Azerbaijan: ban on imports of specimens of Eurasian lynx (*Felis lynx*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 800, issued on April 21, 1994, calls on Parties to suspend imports of *Felis lynx* specimens from Azerbaijan.

Action by the Fish and Wildlife Service

Based on information received, Azerbaijan has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the government of Azerbaijan must comply with the primary recommendation of the CITES Animals Committee for *Felis lynx*, which is designated as a significant trade species. Although Azerbaijan is not a CITES Party, the Russian Federation continues to conduct all CITES permit matters for Azerbaijan. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of *Felis lynx* may be imported into the United States, directly

or indirectly, from Azerbaijan, unless an exemption in CITES Article VII applies.

C. Subject

Peoples Republic of China: ban on imports of specimens of leopard cat (*Felis bengalensis*) and Oriental rat snake (*Ptyas mucosus*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 800, issued on April 21, 1994, calls on Parties to suspend imports of *Felis bengalensis* and *Ptyas mucosus* specimens from China.

Action by the Fish and Wildlife

Based on information received, the People's Republic of China has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the Management Authority of China must advise the CITES Secretariat of the following: improved national legislation for the protection of *Felis bengalensis*, the scientific basis of the management program for *Felis bengalensis* and *Ptyas mucosus*, export quotas for *Felis bengalensis*, an inventory of stockpiles of skins of *Felis bengalensis*, and a system to mark all skins of *Felis bengalensis* that enter trade. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of *Felis bengalensis* and *Ptyas mucosus* may be imported into the United States, directly or indirectly, from the People's Republic of China, unless an exemption in CITES Article VII applies.

D. Subject

India: ban on imports of specimens of Indian bullfrog (*Rana tigerina*) and Asian bullfrog (*Rana hexadactyla*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 800, issued on April 21, 1994, calls on Parties to suspend imports of *Rana tigerina* and *Rana hexadactyla* specimens from India.

Action by the Fish and Wildlife Service

Based on information received, India has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the Management Authority of India should advise the CITES Secretariat of the following: Details of national legislation and management programs for *Rana tigerina* and *Rana hexadactyla*, and any progress in the initiation of studies to determine safe harvest levels and the ecological impact of harvesting *Rana tigerina* and *Rana hexadactyla*. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of *Rana tigerina* and *Rana hexadactyla* may be imported into the United States, directly or indirectly, from India, unless an exemption in CITES Article VII applies. However, CITES Secretariat Notification to the Parties No. 818 states that India has declared that the harvesting and export of specimens of the genus *Rana* are prohibited. Therefore, the Secretariat is satisfied that no further action need be taken by India in order to implement the recommendation of the CITES Animal Committee. The Secretariat further recommends that imports from India of specimens of the genus *Rana* should still be prohibited in deference to the prohibitions established by India.

E. Subject

Indonesia: ban on imports of specimens of lesser sulphur-crested cockatoo (*Cacatua sulphurea*) and Oriental rat snake (*Ptyas mucosus*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 800, issued on April 21, 1994, calls on Parties to suspend imports of *Cacatua sulphurea* and *Ptyas mucosus* specimens from Indonesia. Furthermore, reference is made to regulatory improprieties by Indonesia as regards trade in specimens of *Ptyas mucosus* (Doc 6.19, No. C.1), and trade in specimens of *Cacutua* species (Doc 8.19, No. 66).

Action by the Fish and Wildlife Service

Based on information received, Indonesia has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the Management Authority of Indonesia must notify the CITES Secretariat of the following: The establishment of a moratorium on the exports of *Cacatua sulphurea* pending the outcome of population surveys, and the scientific basis for its harvest quotas of *Ptyas mucosus* and the introduction of a system to ensure that exports of skins of *Ptyas mucosus* do not exceed quotas. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of *Cacatua sulphurea* and *Ptyas mucosus* may be imported into the United States, directly or indirectly, from Indonesia. In addition, the Wild Bird Conservation Act of 1992 already prohibits the importation of specimens of *Cacatua sulphurea*. Specimens of *Ptyas mucosus* are allowed to be imported only in those cases where an exemption in CITES Article VII applies and all other requirements of Federal law are satisified.

F. Subject

Latvia: ban on imports of specimens of Eurasian lynx (*Felis lynx*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 800, issued on April 21, 1994, calls on Parties to suspend imports of *Felis lynx* specimens from Latvia.

Action by the Fish and Wildlife Service

Based on information received, Latvia has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the government of Latvia must notify the CITES Secretariat of the following: when an export quota of *Felis lynx* has been approved, and provide a clarification as to whether this quota includes specimens that can be hunted, skins already on hand, or both. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of *Felis lynx* may be imported into the United States, directly or indirectly, from Latvia, unless an exemption in CITES Article VII applies.

G. Subject

Lithuania: ban on imports of specimens of Eurasian lynx (*Felis lynx*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITIES Secretariat Notification to the Parties No. 800, issued on April 21, 1994, calls on Parties to suspend imports of *Felis lynx* specimens from Lithuania.

Action by the Fish and Wildlife Service

Based on information received, Lithuania has not satisfactorily implemented the recommendations of the CITIES Standing Committee. Specifically, the government of Lithuania must comply with the primary recommendation of the CITES Animals committee for *Felis lynx*, which is designated as a significant trade species. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of *Felis lynx* may be imported into the United States, directly or indirectly, from Lithuania, unless an exemption in CITES Article VII applies.

H. Subject

Peru: ban on imports of specimens of Red-masked conure (*Aratinga erythrogenys*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITIES Secretariat Notification to the Parties No. 800, issued on April 21, 1994, calls on Parties to suspend imports of *Aratinga erythrogenys* specimens from Peru.

Action by the Fish and Wildlife Service

Based on information received, Peru has not satisfactorily implemented the recommendations of the CITES Standing committee. Specifically, the Management Authority of Peru should notify the CITES Secretariat of the following: The establishment and announcement of an annual export quota for *Aratinga erythrogenys* that is consistent with sustainable offtake, and the scientific basis for the management program for *Aratinga erythrogenys*. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of *Aratinga erythrogenys* may be imported into the United States, directly or indirectly, from Peru. In addition, the Wild Bird Conservation Act of 1992 already prohibits the importation of specimens of *Aratinga erythrogenys* without the required permits being issued by the Service.

I. Subject

Republic of Moldova: ban on imports of specimens of Eurasian lynx (*Felis lynx*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITIES Secretariat Notification to the Parties No. 800, issued on April 21, 1994, calls on Parties to suspend imports of *Felis lynx* specimens from the Republic of Moldova.

Action by the Fish and Wildlife Service

Based on information received, the Republic of Moldova has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the government of the Republic of Moldova must comply with the primary recommendation of the CITES Animals Committee for *Felis lynx*, which is designated as a significant trade species. Although the Republic of Moldova is not a CITES Party, the Russian Federation continues to conduct all CITES permit matters for the Republic of Moldova. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of *Felis lynx* may be imported into the United States, directly or indirectly, from the Republic of Moldova, unless an exemption in CITES Article VII applies.

J. Subject

Togo: ban on imports of specimens of ball python (*Python regius*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 800, issued on April 21, 1994, calls on Parties to suspend imports of *Python regius* specimens from Togo.

Action by the Fish and Wildlife Service

Based on information received, Togo has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the Management Authority of Togo should advise the CITES Secretariat of the following: the establishment of a scientifically based sustainable-use management program including export controls for *Pythron regius*. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of *Python regius* may be imported into the United States, directly or indirectly, from Togo, unless an exemption in CITES Article VII applies.

K. Subject:

Ukraine: ban on imports of specimens of Eurasian lynx (*Flexis lynx*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 800, issued on April 21, 1994, calls on Parties to suspend imports of *Felis lynx* specimens from Ukraine.

Action by the Fish and Wildlife Service

Based on information received, Ukraine has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the government of Ukraine must comply with the primary recommendation of the CITES Animals Committee for *Felis Lynx*, which is designated as a significant trade species. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of *Felis lynix* may be imported into the United States, directly or indirectly, from Ukraine, unless an exemption in CITES Article VII applies.

L. Subject:

United Republic of Tanzania: ban on imports of specimens of Fishers Lovebird (*Agapornis fisheri*) and Pancake tortoise (*Malacochersus tornier*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance

or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 800, issued on April 21, 1994, calls on Parties to suspend imports of *Agapornis fischeri* and *Malaco-chersus tornieri* specimens from the United Republic of Tanzania. Furthermore, reference is made to regulatory improprieties by Tanzania as regards trade in specimens of *Agapornis* species (Doc 8.19, No. 54), and trade in specimens of *Malacochersus tornieri* (Doc 81.9, No. 90).

Action by the Fish and Wildlife Service

Based on information received, the United Republic of Tanzania has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the Management Authority of the United Republic of Tanzania must advise the CITES Secretariat of the following: the initiation of population surveys for *Agapornis fischeri* and *Malacochersus tornieri* and, the introduction of a moratorium on trade of *Malacochersus tornieri* pending the results of the population survey and the establishment of a sustainable-use management program for *Malacochersus tornieri*. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of *Agapornis fischeri* and *Malacochersus tornier* may be imported into the United States, directly or indirectly, from the United States Republic of Tanzania. In addition, the Wild Bird Conservation Act of 1992 already prohibits the importation of specimens of *Agapornis fischeri* without the required permits being issued by the Service. Shipments of *Malacochersus tornieri* that are covered by, and comply with, the terms of an exemption in CITES Article VII may be imported if all other requirements of Federal law are satisfied.

Dated: October 28, 1994.

George T. Frampton, Jr.,

Assistant Secretary of Fish and Wildlife and Parks.

[FR Doc. 94–30053 Filed 12–6–94; 8:45 am]

BILLING CODE 4310–55–P

Notice of Receipt of Applications for Approval

The following applicants have applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Rick Jordan, Kutztown, PA. The applicant wishes to establish a cooperative breeding program for the Crimson-bellied Conure (*Pyrrhura perlata perlata*). The applicant wishes to be an active participant in this program with one other private individual. The American Federation of Aviculture has assumed the responsibility for the oversight of the program.

Applicant: Toucan Preservation Center, Jerry Jennings, Director, Fallbrook, CA. The applicant wishes to establish a cooperative breeding program for the Keel billed Toucan (*Ramphastos sulphuratus*), the Red Breasted Toucan (*Ramphastos diclorus*), the Saffron Toucanet (*Baillonius bailloni*), and the Chestnut Eared Aracari (*Pteroglossus castanotis*). The applicant wishes to be an active participant in this program with three other private individuals and, two zoological organizations. The Toucan Preservation Center has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 2, 1994.

Susan Lieberman,

Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 94–30052 Filed 12–6–94; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

Notice of Designation of Additional Commission Investigative Attorney

[Investigation No. 337–TA–368]

In the Matter of: Certain Rechargeable Nickel Metal Hydride Anode Materials and Batteries, and Products Containing Same

Notice is hereby given that, as of this date, Smith R. Brittingham, Esq. and Kent R. Stevens, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Kent R. Stevens, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: November 23, 1994.

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, S.W., Washington, D.C. 20436.

[FR Doc. 94–30094 Filed 12–6–94; 8:45 am]

BILLING CODE 7020–02–P

Investigations Nos. 731–TA–696–698 (Final)

Magnesium From The People's Republic of China, Russia, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–696–698 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China), Russia, and Ukraine of unwrought pure magnesium [1] and by reason of imports from China

[1] For purposes of these investigations, unwrought pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Products that have the aforementioned primary magnesium content but do not conform to ASTM specifications or other industry or customer-specific specifications are included in the scope of these investigations. Pure unwrought magnesium is provided for in subheadings 8104.11.00 and 8104.20.00 of the Harmonized Tariff Schedule of the United States (HTS). Excluded from the scope of investigation are magnesium anodes, granular magnesium (including turnings and powder), and secondary magnesium. See also, Commerce's scope of investigation in its notices of preliminary determinations, 59 F.R. 55420, 55424, and 55427

and Russia of unwrought alloy magnesium.[2]

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Janine Wedel (202–205–3178), Office of s, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of unwrought pure magnesium from China, Russia, and Ukraine and imports of unwrought alloy magnesium from China and Russia are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on March 31, 1994, by Magnesium Corporation of America (Magcorp), Salt Lake City, UT; the International Union of Operating Engineers, Local 564, Freeport, TX; and the United Steelworkers of America, Local 8319, Salt Lake City, UT.

Participation in the Investigations and Public Service List.—Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register.** The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report.—The prehearing staff report in these investigations will be placed in the nonpublic record on March 15, 1995, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on March 28, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 20, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 23, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony *in camera.*

Written Submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is March 22, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 5, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 5, 1995. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: November 30, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–30093 Filed 12–6–94; 8:45 am]

BILLING CODE 7020–02–P

[2] For purposes of these investigations, unwrought alloy magnesium contains less than 99.8 percent magnesium by weight but 50 percent or more magnesium by weight, with magnesium being the largest metallic element in the alloy by weight, and is sold in various ingot and billet forms and sizes. Products that have the aforementioned primary magnesium content but do not conform to ASTM specifications or other industry or customer-specific specifications are included in the scope of these investigations. Unwrought alloy magnesium is provided for in subheadings 8104.19.00 and 8104.20.00 of the HTS. Excluded from the scope of investigation are magnesium anodes, granular magnesium (including turnings and powder), and secondary magnesium. See also, Commerce's scope of investigation in its notices of preliminary determinations, 59 FR 55424 and 55427.

[Investigation No. 731–TA–699 (Final)]

Stainless Steel Angle From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–699 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of stainless steel angle, provided for in subheading 7222.20.30 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general

application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of stainless steel angle from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 8, 1994, by Slater Steels Corp., Fort Wayne, IN.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 17, 1995, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 30, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 17, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 23, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is March 24, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 7, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 7, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: November 30, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–30092 Filed 12–6–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 363X)]

Burlington Northern Railroad Company—Abandonment Exemption—in Washington County, OR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Burlington Northern Railroad Company of 5.01 miles of railroad line between Merle (milepost 21.09) and the General Motors Spur near Murray Boulevard in Beaverton (milepost 26.10), in Washington County, OR, subject to standard labor protective conditions and an historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 22, 1994. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) [1], petitions to stay, requests for a public use condition conforming to 49 CFR 1152.28(a)(2), and petitions to reopen must be filed by December 19, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 363X) to: (1) Office of the Secretary, Case Control

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

Branch, 1201 Constitution Avenue, N.W., Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Sarah J. Whitley, 3800 Continental Plaza, 777 Main St., Forth Worth, TX 76102–5384.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: November 23, 1994.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 94–30087 Filed 12–6–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the United States Trade Representative

Labor Advisory Committee for Trade Negotiations and Trade Policy; Notice of Renewal

The Secretary of Labor and the United States Trade Representative have taken steps to renew the Labor Advisory Committee for Trade Negotiations and Trade Policy. The Committee and subcommittees are chartered pursuant to Section 135(c) (1) and (2) of the Trade Act of 1974 (19 U.S.C. 2155(c) (1) and (2), *as amended* by section 1103 of the Trade Agreements Act of 1979, Pub. L. No. 96–39, 93 Stat. 308, the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (1988) and Executive Order No. 11846, March 27, 1975 (19 U.S.C. 2111 nt). The charter of the Committee will be filed 15 days from the date of this notice.

The Labor Advisory Committee for Trade Negotiations and Trade Policy consults with, and makes recommendations to the Secretary of Labor and to the United States Trade Representative on issues of general policy matters concerning labor and trade negotiations, operations of any trade agreement once entered into, and other matters arising in connection with the administration of the trade policy of the United States.

The Committee will meet at irregular intervals at the call of the Secretary of Labor and the United States Trade Representative. The frequency of committee meetings will be approximately two or three times per year, depending upon the needs of the Secretary of Labor and the United States Trade Representative. The Steering Subcommittee will meet monthly. Other subcommittees may meet on an ad hoc basis.

Representatives from the private sector wishing further information or to be considered for appointment to serve on the committee should contact: Mr. Fernand Lavallee, Director, Trade Advisory Group, Bureau of International Labor Affairs, Frances Perkins Building, Department of Labor, Room C–4312, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 219–4752.

Signed at Washington, DC, this 30th day of Nov. 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–30095 Filed 12–6–94; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

[TA–W–30,190]

Vought Aircraft Company A/K/A LTV Aerospace & Defense Company, Dallas, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 8, 1994, in response to a petition which was filed by the United Auto Workers, Local 848, on behalf of workers at Vought Aircraft Company, Dallas, TX.

An active certification, revised November 16, 1994, covering the petitioning group of workers remains in effect (TA–W–29,206). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of November, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–30096 Filed 12–6–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 19, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 19, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Ave, NW., Washington, DC 20210.

Signed at Washington, DC this 21st day of November, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Sybron Dental Specialties (Wkrs)	Romulus, MI	11/21/94	11/03/94	30,497	Dental Instruments.
RB & W Corp (UPWU)	Kent, OH	11/21/94	10/28/94	30,498	Nuts and Bolts.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Martin Marrietta Corp (Wkrs)	Conklin, NY	11/21/94	11/06/94	30,499	Defense Electronic Programs.
Lennon Foods, Inc (UFCW)	Seattle, WA	11/21/94	10/23/94	30,500	Pork Products.
General Porcelain (Wkrs)	Trenton, NJ	11/21/94	11/07/94	30,501	Bath Accessories & Artware.
General Motors—Delco Chassis (UAW)	Bristol, CT	11/21/94	11/11/94	30,502	Automotive Parts.
Clopay E & I Door (Wkrs)	Shawano, WI	11/21/94	11/09/94	30,503	Stile and Rail Doors.
Dawson Home Fashions (ILGWU)	Vienna, OH	11/21/94	11/10/94	30,504	Bath Accessories and Tablecloths.
Cushman Industries, Inc (Co/Wkrs)	Hartford, CT	11/21/94	11/02/94	30,505	Manual and Power Chucks.
AST Research (Wkrs)	Ft. Worth, TX	11/21/94	09/29/94	30,506	Printed Circuit Boards.
A.P. Green Refractories, Inc (USWA)	Warren, OH	11/21/94	10/17/94	30,507	Manufacture Alumina Refractories.
Marathon Oil Co (Co)	Anchorage, AK	11/21/94	10/09/94	30,508	Crude Oil and Natural Gas.
Marathon Oil Co (Co)	Kenai, AK	11/21/94	11/09/94	30,509	Crude Oil & Natural Gas.
Enron (Wkrs)	Corpus Christi, TX	11/21/94	10/18/94	30,510	Gas Pipeline & Measurement.

[FR Doc. 94–30097 Filed 12–6–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,931]

Dresser Industries, Incorporated Guiberson-Ava Division Dallas, Texas; Notice of Affirmative Determination Regarding Application for Reconsideration

On October 24, 1994, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was published in the **Federal Register** on October 14, 1994 (59 FR 50624).

Findings show that the company is engaged in on-site field supervision and consultation of down-hole equipment for drilling.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 22nd day of November 1994.

[FR Doc. 94–30099 Filed 12–6–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,808]

Smith System Manufacturing Company Princeton, Minnesota; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated September 10, 1994, after being granted a filing extension, Local #1996 of the Machinists Union (IAM), requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was published in the **Federal Register** on August 15, 1994 (59 FR 41792).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation files show that the workers produce school and office furniture.

The union submitted annual U.S. import data from the Department of Commerce for furniture which would include the products produced by Smith System. This impact data, however, was included in the Department's investigation.

The Department's denial is based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. worker separations were the result of a corporate decision to consolidate its production of furniture at other domestic locations. During the consolidation period, employment at the Princeton plant decreased while employment at the corporate transfer plants increased commensurately. There was no decline in corporate sales during this period.

The Trade Act was not intended to provide TAA Benefits to everyone who is in some way affected by foreign competition but only to those who experienced a decline in sales or production and employment and an increase in imports of like or directly competitive articles which contributed importantly to declines in sales or production and employment at the workers' firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's Prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–30100 Filed 12–6–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,773]

James River Corporation Old Town, Maine; Notice of Revised Determination on Reconsideration

On November 16, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice will soon be published in the **Federal Register.**

On reconsideration, the James River Corporation submitted new information showing that hardwood pulp sales by the company declined in 1993 compared to 1992. The initial findings show substantial worker separations in 1993.

U.S. imports of hardwood pulp increased absolutely and relative to domestic shipments in 1993 compared to 1992.

Further findings on reconsideration show that a major declining customer increased its imports of hardwood pulp

while decreasing its purchases from the subject firm.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the James River Corporation workers in old Town, Maine were adversely affected by increased imports of articles like or directly competitive with hardwood pulp producer at James River Corporation in Old Town, Maine.

"All workers of James River corporation in Old Town, Maine who became totally or partially separated from employment on or after April 5, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 22nd day of November 1994

Victor J. Trunzo,

Program manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 94–30101 Filed 12–6–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,358]

Oshkosh B'Gosh, Incorporated Oshkosh, Wisconsin; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 26, 1994 in response to a worker petition which was filed on behalf of workers at Oshkosh B'Gosh, Incorporated, Oshkosh, Wisconsin (164 W. 28th Ave., and 2728 Oregon Street).

All workers of the subject firm are covered under amended certification (TA–W–29–554B and C). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 22nd day of November, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–30102 Filed 12–6–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,951]

Saft Aerospace Batteries, A Division of Saft America Gainesville, Florida; Formerly Gates Aerospace Batteries Division of Gates Energy Products, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on September 2, 1994 and published in the **Federal Register** on November 1, 1994 (59 FR 54631–2).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the Gates Aerospace Batteries Division of Gates Energy Products, Inc., was the predecessor-in-interest firm. Many of the workers had unemployment insurance (UI) taxes paid under the former firm.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,951 is hereby issued as follows:

"All workers of Saft Aerospace Batteries, Gainesville, Florida, a division of Saft America (formerly Gates Aerospace Batteries Division of Gates Energy Products, Inc., Gainesville, Florida) who became totally or partially separated from employment on or after January 1, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 22nd day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–30103 Filed 12–6–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,441–2]

Abbott & Company Prospect and Marion, Ohio; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 31, 1994 in response to a worker petitions which were filed on October 19, 1994 on behalf of workers at Abbott & Company, Prospect, Ohio (TA–W–30,411) and Marion, Ohio (TA–W–30,442).

The petitioning groups of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–30,435). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 22nd day of November, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–30104 Filed 12–6–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,491]

Vought Aircraft Company Dallas, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 14, 1994 in response to a worker petition which was filed on behalf of workers at Vought Aircraft Company, Dallas, Texas.

Active certification covering the petitioning group of workers at the subject firm remains in effect (TA–W–29,206). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 22nd day of November, 1994

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–30105 Filed 12–6–94; 8:45 am]

BILLING CODE 4510–30–M

Advisory Council on Unemployment Compensation; Notice of Meeting

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 4007, Feb. 3, 1992). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program, and to make recommendations for improvement.

Time and Place: The meeting will be held from 8:00 a.m. to 5:00 p.m. on January 4, 1995 at the Embassy Row Hotel, 2015 Massachusetts Avenue, N.W., Washington, D.C.

Agenda: The agenda for the meeting is as follows:

(1) Finalizing the Council's findings and recommendations for its 1995 report; and,

(2) Planning the Council's 1995 activities.

Public Participation: The meeting will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

For Additional Information Contact: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–4231, Washington, D.C. 20210. (202) 219–7831. (This is not a toll-free number.)

Signed at Washington, D.C., this 1st day of December 1994.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 94–30106 Filed 12–6–94; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00132]

F.C.I.; Freeman, South Dakota Notice of Revised Determination on Reconsideration

On September 9, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for NAFTA Transitional adjustment Assistance for former workers of the subject firm. This notice was published in the **Federal Register** on September 23, 1994 (59 FR 48914).

On reconsideration, it was found that F.C.I. ceased production of industrial back supports in January, 1994. Other findings show substantial worker separations occurred in 1993 and 1994.

New findings on reconsideration show that a major declining customer of industrial back supports from F.C.I. decreased its purchases in 1994 and substantially increased its import purchases of back supports.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the F.C.I. workers in Freeman, South Dakota were adversely affected by increased imports of articles like or directly competitive with the back supports produced at F.C.I. in Freeman, South Dakota.

In accordance with the provisions of the Act, I make the following revised certification for the F.C.I. workers in Freeman, South Dakota.

"All workers of F.C.I. in Freeman, South Dakota who were engaged in employment related to the production of back supports who became totally or partially separated from employment on or after June 7, 1993 are eligible to apply for adjustment assistance under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C., this 25th of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 94–30098 Filed 12–6–94; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 17, No. 2).

Under the Energy Reorganization Act of 1974, which created NRC, an abnormal occurrence is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." NRC has made a determination that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the second calendar quarter of 1994. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described.

This report addresses seven abnormal occurrences (AOs) at NRC-licensed facilities. Five involved medical brachytherapy misadministrations, one involved a medical teletherapy misadministration, and one involved a medical sodium iodide misadministration. Four AOs were reported by the Agreement States as of August 3, 1994. Two involved medical brachytherapy misadministrations, one involved a radiation burn received by an industrial radiographer, and one involved a lost well logging source.

The report also contains updates of seven AOs previously reported by NRC licensees and five AOs previously reported by Agreement State licensees. Three "Other Events of Interest" are also reported. One involved a deliberate coverup of an error in a diagnostic radiopharmaceutical administration at an NRC licensee, one involved an Order Suspending License and Demand for Information at an NRC licensee, and one involved an overexposure of an industrial radiographer at an Agreement State licensee.

A copy of the report is available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C. 20037, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG–0090, Vol. 17, No. 2 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 1st day of December 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–30051 Filed 12–6–94; 8:45 am]

BILLING CODE 7590–01–M

Atomic Safety and Licensing Board; In the matter of Georgia Power Company, et al. (Vogtle Electric Generating Plant, Units 1 and 2); Evidentiary Hearing

[Docket Nos. 50–424–OLA–3; 50–425–OLA–3; ASLBP No. 96–671–01–OLA–3]

December 1, 1994.

Pursuant to 10 CFR 2.752, we will hold a public evidentiary hearing beginning at 9 am on December 28, 1994, at the Hearing Room, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The purpose of the hearing is to receive evidence concerning alleged misrepresentations about an alleged illegal transfer of operating authority for the Vogtle Plant. The hearing is expected to last up to three weeks. Most sessions will be in Washington, D.C., but there may also be some sessions in Atlanta, Georgia, at a place to be announced.

Rockville, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair.

[FR Doc. 94–30090 Filed 12–6–94; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 14, 1994, through November 25, 1994. The last biweekly notice was published on November 23, 1994 (59 FR 60377).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 6, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: October 25, 1994

Description of amendments request: The proposed change would delete the remainder of Appendix B, Environmental Technical Specifications, including section 2/3.3.1, Water Level in the Discharge Canal, and Section 2/3.4, Meteorology.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Hydraulic - Water level in the Discharge Canal

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of the discharge canal specification of 4.5 [plus or minus] 1 ft mean sea level (msl) with daily monitoring still leaves the operating restrictions delineated in Updated Final Safety Analysis Report (UFSAR) Section 2.4.8.3.3 (4.5 [plus or minus] 2 ft msl) and the National Pollutant Discharge Elimination System (NPDES) permit requirements to minimize the impact of the discharge canal on the local groundwater supply. As stated in this UFSAR section, the effect on the local ground water regime will be minimal within this band. Level recorders in the control room facilitate the continued monitoring the discharge canal level in excess of the Appendix B Environment Technical Specification (ETS) listed daily surveillance. This change in no way affects the design or operation of equipment that could initiate or mitigate any accident previously evaluated.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The discharge canal level is an environmental concern with the effects of a spill of radioactive liquids (UFSAR Section 2.4.12.3) being a path to the intake canal, due to the areas natural gradient. With the estimated travel time for the liquid to reach the canal (intake) at 60 years, and the large flow rate the degree of dilution is such that this does not pose a threat to local wells. The amendment would not affect the operation or design of any plant equipment; therefore, no new credible accidents are created. In addition, the proposed amendment would not affect the capability of the response systems to mitigate the consequences of any accident previously evaluated; therefore, no new or different accident would result from this change.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The existence of these ETS does not provide a margin of safety related to the nuclear operation of the site. No safety limits are affected by this change. Therefore, this amendment would not result in a reduction in any margin of safety.

Meteorology

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of the meteorology specification still leaves the program delineated in UFSAR Section 2.3.3, Onsite Meteorological Measurements Program, and reporting/recording of the hourly meteorological data required to support Technical Specification 6.9.1.10.a, Semiannual Radioactive Effluent Release Report. This program is based on the meteorological monitoring program described in Regulatory Guide 1.23, and NUREG-0654. While the existing ETS 30 day reporting requirement for extended out-of-service time and shiftly manual acquisition of data during batch or accidental releases are not otherwise covered, the program does contain the Regulatory Guide 1.23 reference to 90% data recovery and a backup phone line is available for data retrieval. This proposed amendment in no way affects the design or operation of equipment that could initiate or mitigate any accident previously evaluated.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The meteorological monitoring program is specified in UFSAR Section 2.3.3. The amendment would not affect the operation or design of any plant equipment; therefore, no new credible accidents are created. In addition, the proposed amendment would not affect the capability of the response systems to mitigate the consequences of any accident previously evaluated nor would the amendment reduce the effectiveness of the Emergency Response Plan; therefore, no new or different accident would result from this change.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The meteorological ETS does not provide any additional margin of safety related to the operation of a nuclear plant. The meteorological program established in the UFSAR covers the requirements stated in Appendix E to 10 CFR 50 by providing meteorological systems adequate for determining the magnitude of, and for continuously assessing the impact of, the release of radioactive materials to the environment. The meteorological instrumentation is used to measure environmental parameters which may affect distribution of fission products and gases following a Design Basis Accident (DBA); however, it is not a primary success path for the mitigation of a DBA. No safety limits are affected by this change. Therefore, this amendment would not result in a reduction in any margin of safety.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road,

Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: William H. Bateman

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: October 28, 1994

Description of amendments request: The proposed changes would revise the Technical Specifications to increase the surveillance test intervals and allowable out-of-service times for selected instrumentation addressed in Section 3/4.3. The proposed changes would permit specified channel functional tests to be conducted quarterly rather than weekly or monthly. Specifically, the proposed changes would revise the surveillance test intervals and allowable out-of-service times for the reactor protection system instrumentation, isolation actuation instrumentation, emergency core cooling system actuation instrumentation, control rod withdrawal block instumentation, control room emergency ventilation system instrumentation, anticipated transient without scram - recirculation pump trip system instrumentation, end-of-cycle recirculation pump trip system instrumentation, and reactor core isolation cooling system actuation instrumentation, in accordance with NRC-approved General Electric Company Licensing Topical Reports and NUREG-1433, Standard Technical Specifications, General Electric Plants, BWR/4."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Operation of Brunswick Steam Electric Plant, Units 1 and 2, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The generic Licensing Topical Report, NEDC-30851P-A, assessed the impact of changing RPS surveillance test intervals (STIs) and allowable out-of-service times (AOTs) on the RPS failure frequency, the scram frequency and equipment cycling. Specifically, Section 5.7.4, "Significant Hazards Assessment" of NEDC-30851P-1 states:

"Fewer challenges to the safeguards system, due to less frequent testing of the RPS, conservatively results in a decrease of approximately one percent in core damage frequency". This decrease is based upon the following:

* Based on the plant-specific experience presented in Appendix J, the estimated reduction in scram frequency (0.3 scrams/yr) represents a 1 to 2 percent decrease in core damage frequency based on the BWR plant specific Probabilistic Risk Assessments (PRAs) listed in Table 5-8.

* The increase in core damage frequency due to less frequent testing is less than one percent. This increase is even lower (less than 0.01 percent) when the changes resulting from the implementation of the Anticipated Transients Without Scram (ATWS) rule are considered. Therefore, this increase is more than offset by the decrease in CDF due to fewer scrams.

* The effect of reducing unnecessary cycles on RPS equipment, although not easily quantifiable also results in a decrease in core damage frequency.

* The overall impact on core damage frequency of the changes in allowable out-of-service time is negligible."

From this generic analysis, the BWR Owners' Group concluded and CP&L concurs that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated, since the increase in probability of a a scram failure due to RPS unavailablity is insignificant. The overall probability of an accident is decreased as the time the RPS instrumentation logic operates undisturbed is increased, resulting in fewer inadvertent scrams during testing and repair. The proprietary plant-specific analysis contained in this submittal (Enclosure 6) demonstrates that, although BSEP Units 1 and 2 differ from the generic plant analyzed in LTR NEDC-30851P-A, the net effect of the plant-specific differences does not alter the generic conclusions.

The generic Licensing Topical Reports, NEDC-30851P-A, Supplement 2 and NEDC 31677P-A, assessed the impact of changing STIs and AOTs for BWR Isolation Instrumentation. Section 4.0, "Summary of Results," of NEDC-30851P-A, Supplement 2 states:

"The results indicate that the effects on probability of failure to initiate isolation are very small and the effects on probability or frequency of failure to isolate are negligible in nearly every case. In addition, the results indicate that increasing the AOT to 24 hours for tests and repairs has a negligible effect on the probability of failure of the isolation function. These combined with changes to the testing intervals and allowable out-of service times for RPS and ECCS instrumentation provide a net improvement to plant safety and operations."

and Section 5.6, "Assessment of Net Effect of Changes," of NEDC-31677P-A states:

"A reduction in core damage frequency (CDF) of at least as much as estimated in the ECCS instrumentation analysis can be expected when the isolation actuation instrumentation STIs are changed from one month to three months. The chief contributor to this reduction is the channel functional tests for the MSIVs. Inadvertent closure of the MSIVs will cause an unnecessary plant scram. This reduction in CDF more than compensates for any small incremental increase (10% or 1.0E-07/year) in calculated isolation function failure frequency when the STI is extended to three months."

From this generic analysis, the BWR Owners' Group concluded and CP&L concurs that the proposed changes do not significantly increase the consequences of an accident previously evaluated, since the increase in probability of an isolation failure due to isolation instrumentation unavailability is insignificant. For those parameters common to RPS, the overall probability of an accident is actually decreased as the time the RPS instrumentation logic operates undisturbed is increased, resulting in less inadvertent scrams during testing and repair. The plant-specific evaluation provided with this submittal (Enclosure 8) demonstrates that the conclusions of the generic analyses are applicable to BSEP Units 1 and 2.

The generic Licensing Topical Report, NEDC-30936P-A (Parts 1 and 2), assessed the impact of changing STIs and AOTs for all BWR ECCS Actuation Instrumentation. Section 4.0, "Technical Assessment of Changes," of NEDC-30936P-A (Part 2) states:

"The results indicate an insignificant (less than 5E-7 per year) increase in water injection function failure frequency when STIs are increased from 31 days to 92 days, AOTs for repair of the ECCS actuation instrumentation are increased from one hour to 24 hours, and AOTs for surveillance testing are increased from two to six hours. For all four BWR models the increase represents less than 4% increase in failure frequency. However, when other factors which influence the overall plant safety are considered, the net result is judged to be an improvement in plant safety."

From this generic analysis, the BWR Owners' Group concluded and CP&L concurs that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated, since the increase in probability of a water injection failure due to ECCS instrumentation unavailability is insignificant and the net result is judged to be an improvement in plant safety. The plant-specific analysis contained in this submittal (Enclosure 7) demonstrates that, although BSEP Units 1 and 2 differ from the generic model analyzed in LTR NEDC-30936P-A, the net effect of the plant-specific differences does not alter the generic conclusions. The generic Licensing Topical Reports, NEDC-30851P-A, Supplement 1, and GENE-770-06-1-A assessed the impact of changing Control Rod Block STIs and AOTs on Rod Block failure frequency. GENE-770-06-1-A also assessed the impact of changing STIs and AOTs on ATWS-RPT and EOC-RPT failure frequency. Section 5 (Brookhaven National Laboratory's Technical Evaluation Report - Attachment 2 to the NRC SER) of NEDC-30851P-A, Supplement 1 states:

1"The BWR Owners' Group proposed changes to the Technical Specifications concerning the test requirements for BWR control rod block instrumentation. The changes consist of increasing the surveillance

test intervals from one to three months. These test interval extensions are consistent with the already approved changes to STIs for the Reactor Protection System. The technical analysis reviewed and verified as documented herein indicates that there will be no significant changes in the availability of the control rod block function if these changes are implemented. In addition, there will be a negligible impact on the plant core melt frequency due to the decreased testing."

and Section 2.0, "Summary" of GENE-770-06-1-A states:

"Technical bases are provided for selected proposed changes to the instrumentation STIs and AOTs that were identified in the BWROG Improved BWR Technical Specification activity. These STI and AOT changes are consistent with approved changes to the RPS, ECCS, and isolation actuation instrumentation. These proposed changes do not result in a degradation to overall plant safety."

Based on the generic analysis in NEDC-30851P-A, Supplement 1, the BWR Owners' Group concluded and CP&L concurs that the proposed changes to Control Rod Withdrawal Block instrumentation do not significantly increase the probability or consequences of an accident previously evaluated. Also, based on the generic assessment in GENE-770-06-1-A, the BWR Owners' Group concluded and CP&L concurs that the proposed changes to the ATWS-RPT and EOC-RPT instrumentation do not significantly increase the probability or consequences of an accident previously evaluated.

Bases contained in GE Topical Report GENE-770-06-2P-A, assessed the impact of changing STIs and AOTs on BWR RCIC failure frequency. Section 2.0, "Summary" of GENE-770-06-2P-A states:

"The STI and AOT changes to the RCIC actuation instrumentation are justified based on their small effect on the water injection function unavailability and consistency with comparable changes to actuation instrumentation for the other ECCS subsystems."

On this basis, the BWR Owners' Group concluded and CP&L concurs that the proposed changes to RCIC instrumentation do not significantly increase the probability or consequences of an accident previously evaluated.

2) Operation of Brunswick Steam Electric Plant, Units 1 and 2, in accordance with the proposed amendment, would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the physical characteristics or function of any plant systems or components and they do not introduce any new mode of operation. Therefore, system and component performance would not be challenged in a manner that could create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Operation of Brunswick Steam Electric Plant, Units 1 and 2, in accordance with the proposed amendment, would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed and approved the generic studies contained in the LTRs and has concurred with the BWR Owners' Group that the proposed changes do not significantly affect the probability of failure or availability of the affected Instrument Systems. The proposed changes to AOTs provide realistic times to complete the required actions without increasing the overall instrument failure frequency. Likewise, the extended STIs do not result in significant changes in the probability of instrument failure. Furthermore, the proposed changes will reduce the probability of test-induced plant transients and equipment failures. Finally, instrument setpoint drift will remain within present tolerances, thereby assuring that the margin of safety, as demonstrated by applicable safety analyses, remains unchanged. Therefore, it is concluded that the proposed changes would not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: William H. Bateman

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: November 4, 1994

Description of amendment request: The requested amendment will change the testing frequency of the turbine overspeed protection valves from monthly to quarterly.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The requested change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The requested change will have no influence on the probability or consequences of an accident previously evaluated. The accident of concern to this requested change is a turbine overspeed with missile generation impacting safety related components or structures. The evaluation in WCAP-11525 shows that the probability of a missile ejection incident will not be affected with the requested frequency reduction to the turbine overspeed protection valve surveillance test. There is no change to the consequences of the event as the postulated accident event is unchanged. Accordingly, the requested change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The requested change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change affects the test interval for the turbine overspeed protection valves and does not change the design, operation, or failure modes of the valves and other components in the turbine overspeed protection system. Therefore, the requested change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The requested change does not involve a significant reduction in the margin of safety. The probability of turbine overspeed with an extension of the testing interval has been determined to be within applicable acceptance criteria. The change does not affect the design, operation, or failure modes of the valves or other components in the turbine overspeed protection system. Accordingly, the requested change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: William H. Bateman

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: November 7, 1994

Description of amendment request: The proposed amendment would allow an increase to the allowable nominal fuel enrichment from 4.2 to 5.0 weight percent Uranium-235 (w/o U-235). The changes include: (1) increasing the allowable storage enrichment in Region 1 and allowing the use of Integral Fuel Burnable Absorbers (IFBAs) for reactivity equivalencing, (2) revising the Region 2 discharge burnup curve to

include nominal fuel enrichments up to 5.0 w/o U-235, and (3) making editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Section 5 of Technical Specifications do not affect any accident initiators or precursors and do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident. The fuel enrichment increase will not affect reactor operation or the core design methods. The physical characteristics of the fuel assemblies are not changed, and fuel assembly movement will continue to be controlled by approved fuel handling procedures. Reload core designs will continue to be performed on a cycle by cycle bases as part of the reload safety evaluation process, using NRC approved codes and methods. Each reload design is evaluated to confirm that the cycle core design adheres to the limits that exist in the accident analyses and Technical Specifications to ensure that reactor operation is acceptable.

The proposed changes are consistent with the analysis performed in the "Criticality Analysis of Byron and Braidwood Station Fuel Storage Racks." The analysis was revised in June 1994 to include boraflex gaps and shrinkage. The revised analysis is provided in the proposed Technical Specification amendment. The analysis methodology has been previously accepted by the NRC and is consistent with the appropriate standards to establish the K_{eff} limit for storage racks and to calculate the maximum K_{eff}. The reanalysis addresses the most limiting postulated accident of a misloaded fuel assembly and has shown that having at least 300 ppm of soluble boron offsets any positive reactivity impacts for any of the postulated accidents. The concentration of boron in the spent fuel pool water, which is administratively controlled, is sufficient to maintain K_{eff} less than or equal to 0.95. The analysis is bounding for a dropped fuel assembly on top of a rack or between rack modules, loss of cooling systems, and reduction the fuel pool temperature to less than 50°F. The proposed changes do not impact any other accident previously evaluated in the [Updated Final Safety Analysis Report] UFSAR. There is no postulated accident that could cause reactivity to increase beyond the analyzed conditions in the spent fuel racks.

There is no impact on the ability of the Spent Fuel Pool cooling system to maintain the bulk pool temperature within limits. The UFSAR analysis performed to calculate the maximum fuel cladding temperature and spent fuel pool cooling include assumptions which bound the use of more highly enriched fuel assemblies. Although fuel enrichment is not a specific assumption in any of these analyses, the heat load of a typical core offload may change with higher enrichments. The average burnup of the offload will be increased since few assemblies will be used per cycle; however, the new heat load will continue to be [bound] by the UFSAR analysis because the spent fuel pool racks have been analyzed for a total core offload with all fuel assemblies having 4.5 years of operating time.

The radiological consequences analysis continues to bound the licensed fuel burnup and enrichment at Byron and Braidwood stations. The radiological consequences analysis results are a function of the core inventory of radioactive isotopes. Since the maximum fuel burnup limits and fuel peaking factors will not be exceeded, the assumed fission product inventory will remain valid; therefore, the limits of 10 CFR [Part] 100 continue to be met. Additionally, Byron and Braidwood addressed the issue of the impact on the radiation levels at the pool surface to the worker during non-accident conditions. These conditions are not changed as [a] result of this submittal, because the average fuel assembly burnup limit (isotopic inventory) and maximum power produced in each fuel assembly will not be changed by the increased fuel enrichment.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the design or operation of any system, structure, or component in the plant. There are no changes to parameters governing plant operation; no new or different type of equipment will be installed. Each reactor core design will continue to meet all design requirements; operation of the core will not be affected. No modifications to the spent fuel pool are being pursued and the fuel parameters used in the analysis remain bounding. The method and manner in which the fuel will be stored in the spent fuel pool has not changed. The proposed changes ensure that 17X17 (Optimized Fuel Assembly, VANTAGE 5, VANTAGE +, and PERFORMANCE +) fuel assemblies can be safely stored, maintaining a K_{eff} less than or equal to 0.95 under full water density conditions, in both Regions 1 and 2 of the spent fuel pool. All design criteria and criticality acceptance criteria continue to be met. The reanalysis addresses the most limiting postulated accident (misloaded fuel assembly) and has shown that having at least 300 ppm of soluble boron offsets any positive reactivity impacts for any of the postulated accidents. The level of boron in the spent fuel pool water, which is administratively controlled, is sufficient to maintain K_{eff} less than or equal to 0.95. The reanalysis to increase the storage enrichment of fuel in Regions 1 and 2 of the spent fuel pool does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Additionally, approval of this amendment will not create a new accident with regards to the new fuel storage vault which is designed to handle the increased enrichment. The Byron and Braidwood new fuel vaults were previously analyzed using NRC accepted criticality analysis methodology in June 1989. This analysis was performed to increase the storage enrichment of the New Fuel Vault to 5.0 w/o U-235. The New Fuel Vault analysis was submitted to the NRC and is the current licensing basis.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes do not affect the margin of safety for any Technical Specification. All reactor design criteria will continue to be met. The methodologies used in the accident analyses have been accepted previously by the NRC and all criticality acceptance criteria have been met under all assumed conditions (normal and accident). The design basis for preventing criticality outside the reactor is that, including uncertainties, there is a 95 percent probability at a 95 percent confidence level that the effective neutron multiplication factor, K_{eff}, of the fuel assembly array will be less than 0.95 as recommended by ANSI 57.2-1983 and OT Position Paper for Review and Acceptance of Spent Fuel Storage and Handling Applications, dated April 14, 1978. The analyses for both Regions 1 and 2 fuel storage were verified to meet the above design basis.

The criticality analysis for Regions 1 and 2 has been revised to allow for storage of fuel assemblies with enrichments up to 5.0 w/o U-235. The proposed Technical Specification changes include those changes necessary to maintain K_{eff} less than or equal to 0.95, including conservative allowances for uncertainties and biases, when the pool is flooded with unborated water. The proposed changes include a requirement for fuel assemblies with enrichments above 4.2 w/o U-235 to contain sufficient integral fuel burnable absorbers such that the maximum reference fuel K infinity is less than or equal to 1.470 in unborated water at 68°F due to restrictions on spent fuel storage. Should a postulated accident occur which causes a reactivity increase in the Byron and Braidwood Spent Fuel Pools, K_{eff} will be maintained less than or equal to 0.95 due to the presence of at least 300 ppm of soluble boron in the spent fuel pool. The proposed changes do not affect any plant safety parameters or setpoints.

The proposed changes ensure that the design basis for preventing criticality in the fuel storage areas is preserved, and fuel cycle designs will continue to be analyzed using NRC accepted codes and methods to ensure the design bases are satisfied.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Robert A. Capra

Connecticut Yankee Atomic Power Company (CYAPCO), and Northeast Nuclear Energy Company (NNECO), Docket Nos. 50-213 and 50-245, Haddam Neck Plant, and Millstone Nuclear Power Station, Unit 1, Middlesex County, and New London County, Connecticut

Date of amendment request: October 31, 1994

Description of amendment request: The proposed amendments would renew the existing license conditions for both plants to implement and maintain Integrated Implementation Schedule (IIS) Program Plans (the Program Plan). The Program Plans provide a methodology to be followed for scheduling plant modifications and engineering evaluations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

YAPCO and NNECO have reviewed the proposed changes in accordance with 10 CFR 50.92 and conclude that the changes do not involve a SHC [significant hazards consideration]. The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Operation of the facilities in accordance with these proposed changes would require the implementation of the IIS methodology described in the Program Plans. As such, it requires that CYAPCO and NNECO establish an administrative means for tracking, prioritizing, and scheduling NRC-required plant modifications and engineering evaluations, and licensee identified plant improvement projects. This methodology is intended to enhance plant safety by more effectively controlling the number and scheduling of plant modifications, thereby assuring that issues required for safe operation of the plants receive priority and are completed in a timely manner. Because the license conditions address only an administrative scheduling mechanism, it does not affect directly the design or operation of the plant. Therefore, no accident analyses are affected and the proposed changes do not increase the probability or consequences of any previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed license conditions establish a requirement related to scheduling of modifications and engineering evaluations. Because the license conditions address only an administrative scheduling mechanism, they do not affect directly the design or operation of the plants. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from those previously evaluated.

3. Involve a significant reduction in the margin of safety.

The proposed license conditions renew administrative requirements intended to enhance public safety and reliable plant operation. The proposed license conditions do not affect any accident analyses, directly modify the plant configurations, or change the way the plants are operated. The methodologies are intended to enhance plant safety by more effectively controlling the number and scheduling of plant modifications, thereby assuring that issues required for safe operation of the plants receive priority and are completed in a timely manner. Because the license conditions address only an administrative scheduling mechanism, they do not affect directly the design or operation of the plants. Therefore, the proposed changes do not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457, for the Haddam Neck Plant, and the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360, for Millstone Unit 1.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 5, 1994, as supplemented on November 17, 1994.

Description of amendment request: This amendment is an additional followup to the amendment request of May 29, 1992, published in the **Federal Register** on July 8, 1992 (57 FR 30242), which changed the Technical Specifications (TSs) Section 1.0, Definitions, to accommodate a 24-month fuel cycle and which proposed the extension of the test intervals for specific surveillance tests. This amendment proposes extending the surveillance intervals to 24 months for the following additional surveillance tests:

(1) Charging Flow Instrumentation
(2) Containment Sump, Recirculation Sump, and Reactor Cavity Continuous Level Instrument Channels
(3) Auxiliary Feedwater Flow Rate Channel
(4) Control Room Air Filtration System
(5) Post Accident Containment Venting System
(6) Liquid Rad-Waste Flow Channel
(7) Steam Generator Blowdown Flow Channel
(8) Liquid Waste Distillate Tank Level Channels
(9) Primary Water Storage Tank Level Instrumentation
(10) Flow Rate Monitors; Plant Vent (Unit 2) and Stack Vent (Unit 1)
(11) Stack Vent Noble Gas Activity Monitor (R-60)
(12) High Pressure Water Fire Protection System
(13) Fire Protection System Diesel Engine
(14) Electrical Tunnel, Diesel Generator Building, and Containment Fan Cooler Fire Protection Spray Systems; (A) System Functional Test and (B) Spray Header Visual Inspection
(15) Penetration Fire Barriers
(16) Smoke Detectors/Electrical Penetration Area Inside Containment
(17) Functional Testing of Containment Sump Pumps

The changes requested by the licensee are in accordance with Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Charging Flow Instrumentation

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

It is proposed that the channel calibration frequency for the Charging Flow instrumentation be changed from 18 months (+25%) to every 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists to accommodate the channel statistical error resulting from a 30 month operating cycle. The existing margin provides

assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

The proposed change in operating cycle length due to an increased surveillance interval will not result in a channel statistical allowance which exceeds the current margin. Plant equipment will provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from any previously evaluated from occurring.

3. A significant reduction in a margin of safety is not involved.

The above change in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds current margin. This margin, which is equivalent to the existing margin, is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded.(2) Containment Sump, Recirculation Sump, and Reactor Cavity Continuous Level Instrument Channels

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the calibration and test frequency for the Containment Sump, Recirculation Sump and Reactor Cavity continuous level monitoring instrument channels be revised from every 18 months (+25%) to 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists to accommodate the channel statistical error resulting from a 30 month operating cycle. The existing margin provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The proposed change in operating cycle length due to an increased surveillance interval will not result in a channel statistical allowance which exceeds current margin. Plant equipment will provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from any previously evaluated from occurring.

3. There has been no reduction in the margin of safety.

The above change in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds current margin. This margin is necessary to assure that protective safety functions will occur so that safety analysis limits are not exceeded.

(3) Auxiliary Feedwater Flow Rate Channel

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the calibration frequency for the Auxiliary Feedwater Flow Rate channel be revised from 18 months (+25%) to 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists between the existing technical specification limits and the licensing basis Safety Analysis limit to accommodate the channel statistical error resulting from a 30 month operating cycle. The existing margin between the Technical Specification limit and the Safety Analysis limit provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The proposed change in operating cycle length due to an increased surveillance interval will not result in a channel statistical allowance which exceeds the current margin between the existing Technical Specification limit and the Safety Analysis limit. Plant equipment, which will be set at (or more conservatively than) Technical Specification limits, will provide protective functions to assure that safety analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from any previously evaluated from occurring.

3. There has been no reduction in the margin of safety.

The above change in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds the margin which exists between the current Technical Specification limit and the licensing basis Safety Analysis limit. This margin, which is equivalent to the existing margin, is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded.

(4) Control Room Air Filtration System

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the surveillance frequency for the Control Room Air Filtration System be changed from every 18 months (+25%) to every 24 months (+25%).

For the flow tests, data from 1986 to date indicates that the Control Room Filtration System performed in an acceptable manner when surveilled on an 18 month (+25%) basis. The only discrepancy was due to a hardware error and was independent of the time between surveillances. Per Generic Letter 91-04, this past test history provides an adequate basis to conclude that an extended operating cycle would have minimal impact upon the flow characteristics of the Control Room Filtration System. The modification of the filtration system in 1993 only enhanced system performance.

With regard to the absorbance properties of the charcoal, previous test data highlights a problem occurring during the 1986-1987 period which subsequent testing confirms was adequately resolved.

With the 1993 modification which increased the carbon bed thickness from 1" to 4", performance can only be enhanced.

Therefore, it is concluded that a significant increase in the probability or consequences of an accident previously evaluated will not be incurred by changing the surveillance interval from 18 months (+25%) to 24 months (+25%).

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

A review of past historical surveillance data over 7 years indicates no failures which were time dependent. The modification, which was performed in 1993, can only enhance performance of the system. New fans, an increased charcoal bed thickness, and new HEPA [high-efficiency particulate air] filters will increase the reliability of the system. Thus, it is concluded that the possibility of a new or different kind of accident than that previously evaluated has not been created.

3. There has been no significant reduction in the margin of safety.

Past test data validated the acceptability of the previous air filtration system for an extended surveillance interval. The modification performed in 1993 will only enhance the reliability and performance of the air filtration system. Thus, it is concluded that a significant reduction in the margin of safety is not involved.

(5) Post Accident Containment Venting System

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the surveillance frequency for the Post Accident Containment Venting system be revised from every 18 months (+25%) to 24 months (+25%).

A review of past test history from 1986 to date indicates that the Post Accident Containment Venting System performed in a satisfactory manner when the surveillance period was 18 months (+25%). There was one discrepant condition noted in the 1989 test, which, based upon subsequent tests in 1991 and 1993, does not appear to have been age related. The 1989 observation concerning a gasket is considered to be a one time only event and unlikely to reoccur as a result of extending the surveillance interval from 18 months (+25%) to 24 (+25%).

An added consideration, in terms of safety significance, is the fact that the Post Accident Containment Venting system is diverse and redundant to the post accident hydrogen recombiners which are themselves redundant and the primary means of reducing the post accident hydrogen concentration within containment. The venting system is not relied upon for containment pressure control.

Due to the satisfactory past test history of the venting system, together with its secondary role as a means of controlling post accident hydrogen concentration, it is concluded that a significant increase in the probability or consequences of an accident previously evaluated will not be incurred by changing the surveillance interval from 18 months (+25%) to 24 months (+25%).

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

A review of past historical surveillance data over 7 years indicates no failures which are considered to be time dependent. Although one discrepant condition was observed in the 1989 test it was not repeated in subsequent surveillances. Per Generic Letter 91-04, this constitutes a sufficient basis for revising the surveillance interval from 18 months (+25) to 24 months (+25%). This extension in the operating interval is not expected to have an impact upon the availability of the system. Thus, it is concluded that the possibility of a new or different kind of accident previously evaluated has not been created.

3. There has been no reduction in the margin of safety.

As past test data validates the presumption that an extended operating cycle will not impact the availability of the Post Accident Containment Venting Systems, it is concluded that a significant reduction in the margin of safety is not involved.

(6) Liquid Rad-Waste Flow Channel

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the channel calibration frequency for the Liquid Rad-Waste Flow Channel be revised from every 18 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists to accommodate the channel statistical error resulting from a 30 month operating cycle. The existing margin provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The proposed change in operating cycle length due to an increased surveillance interval will not result in a channel statistical allowance which exceeds current margin. Plant equipment will be set to provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from any previously evaluated from occurring.

3. There has been no reduction in the margin of safety.

The above change in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds the allowable operating margin. This margin, which is equivalent to the existing margin, is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded.

(7) Steam Generator Blowdown Flow Channel

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the channel calibration frequency for the Steam Generator Blowdown Flow channel be revised from every 18 months (+25%) to every 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists to accommodate the channel statistical error resulting from a 30 month operating cycle. The existing margin provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The proposed change in operating cycle length due to an increased surveillance interval will not result in a channel statistical allowance which exceeds the current margin. Plant equipment will provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from any previously evaluated from occurring.

3. There has been no reduction in the margin of safety.

The above change in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds the allowable operating margin. This margin, which is equivalent to the existing margin, is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded.

(8) Liquid Waste Distillate Tank Level Channels

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the channel calibration frequency for the Liquid Waste Distillate Tank level of tanks 13 and 14 be revised from every 18 months (+25%) to every 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists to accommodate the channel statistical error resulting from a 30 month operating cycle. The existing margin provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The proposed change in operating cycle length due to an increased surveillance interval will not result in a channel statistical allowance which exceeds current margin. Plant equipment will be set to provided protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from any previously evaluated from occurring.

3. There has been no reduction in the margin of safety.

The above change in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds the allowable operating margin. This margin, which is equivalent to the existing margin, is necessary to assure that protective safety functions will occur so that safety analysis limits are not exceeded.

(9) Primary Water Storage Tank Level Instrumentation

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the channel calibration frequency for the Primary Water Storage Tank Level instrumentation be changed from every 18 months (+25%) to 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month surveillance has been performed. Based upon this analysis it has been concluded that sufficient margin exists to accommodate the channel statistical error resulting form a 30 month surveillance. The existing margin provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The proposed change in surveillance interval will result in a channel statistical allowance which can be accommodated over a 30 month operating cycle. Plant equipment, which will be set at (or more conservatively than) Technical Specification limits, will provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from any previously evaluated from occurring.

3. There has been no significant reduction in the margin of safety.

The above changes in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds current margin. This margin is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded.

(10) Flow Rate Monitors; Plant Vent (Unit 2) and Stack Vent (Unit 1)

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the calibration frequency for the flow rate monitors for the Plant Vent (Unit 2) and the Stack Vent (Unit 1) be revised from every 18 months (+25%) to every 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists to accommodate the statistical error resulting from a 30 month operating cycle. The existing margin provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The proposed change in operating cycle length due to an increased surveillance interval will not result in a statistical allowance which exceeds the current margin. Plant equipment will be calibrated to provide data to assure that safety analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from an previously evaluated from occurring.

3. There has been no reduction in the margin of safety.

The proposed change in the surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds the allowable operating margin. This margin, which is equivalent to the existing margin, is necessary to assure that protective safety functions will occur so that safety analysis limits are not exceeded.

(11) Stack Vent Noble Gas Activity Monitor (R-60)

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the calibration frequency for the stack vent noble gas activity monitor be revised from every 18 months (+25%) to every 24 months (+25%).

The current monitor replaced the previous monitor and therefore there is only one refueling cycle surveillance data available which proved to be satisfactory. The vendor recommends a calibration period based on user experience. Insofar as the 18 month (+25%) surveillance has proven to be acceptable, extension to a 24 month (+25%) cycle is consistent with the vendor's recommendation. Any additional uncertainty generated due to the extended surveillance is bounded by the uncertainty inherent in a grab sample taken once per 24 hours which is the required compensatory action should the monitor be inoperable. Since setpoints for alarms are not critical to either plant operation or safety, since extensive margin is reflected between the setpoint and applicable limits, it is concluded that any additional uncertainty involved in a longer surveillance cycle will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

This monitor measures the activity of potentially radioactive gaseous effluent through the stack vent. The alarm setpoints are set at a point sufficiently above expected radioactivity levels to avoid unnecessary alarms and, at the same time, far below discharge limits. The purpose of the monitor is to annunciate in the event an unexpected spike in radioactivity level should occur so that corrective action can be taken prior to exceeding a discharge limit. The margin that exists between the discharge limit and the setpoint is more than sufficient to accommodate any drift that could be practically expected in a 24 month (+25%) operating cycle.

In this capacity, the monitor does not have setpoints which are critical to plant operation or safety. Readings are not used in a quantitative manner nor is accuracy important. It is important that the instrument remain operable and respond to step changes in radioactivity level over the operating cycle. It is therefore concluded that an extended operating cycle will not result in the possibility of a new or different kind of accident from any accident previously evaluated.

3. There has been no reduction in the margin of safety.

Sufficient margin exists between plant setpoints and applicable limits to accommodate any realistic drift projected to occur over a 30 month operating cycle. Furthermore, instrument indications are not used in a quantitative manner nor is instrument accuracy of importance. Therefore, it is concluded that no significant reduction in the margin of safety will result from an extended operating cycle.

(12) High Pressure Water Fire Protection System

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the system functional test of the High-pressure Water Fire Protection System be changed from every 18 months (+25%) to every 24 months (+25%).

This system is a static system which is not normally required to operate. The main fire pumps are on standby and are not in operation except for testing. Thus, almost no wear is induced as a function of time except that which results from being in standby status which is minimal and slow acting. Under these circumstances, extending the operating cycle between surveillances would be expected to have negligible affect upon system operability. It is therefore concluded that there would be no significant increase in the probability or consequences of an accident as a result of an extended interval between surveillances.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Extension of the plant operating cycle will primarily extend the time the pumps are in standby capacity. The potential for system deterioration is minimal under these circumstances. Any deterioration that does occur will be slow acting with respect to time. A significant deterioration would be detected by a monthly pump operating test. Thus, an extended operating cycle is not expected to create the possibility of a new or different kind of accident form [from] any previously analyzed.

3. There has been no reduction in the margin of safety.

Extension of the operating cycle by several months only serves to extend the period of time when the pumps are in standby status. Any deterioration under these circumstances will be slow acting. Significant deterioration would be detected by the monthly operating test. Therefore, it is concluded that an extended interval between surveillances will involve no significant reduction in the margin of safety.

(13) Fire Protection System Diesel Engine

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the Fire Protection System Diesel Engine Functional test be changed from every 18 months (+25%) to every 24 months (+25%).

Except for periodic testing, the diesel is in a standby state and not subject to operational stress. Periodic testing imposes limited wear as evidenced by the absence of major repairs during past maintenance. Extension of the operating cycle for several months is expected to have virtually no impact upon diesel operability. Monthly testing would detect any degradation. Thus it is concluded that there would be no significant increase in the probability or consequences of an accident as a result of an extended interval between surveillances.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Extension of the plant operating cycle will, for the most part, only extend the time spent by the pumps in standby capacity. The potential for system deterioration is minimal under these circumstances. Any deterioration that does occur will be slow acting with respect to time. Significant deterioration in performance would be detected by the monthly pump operating test. Thus, an extended operating cycle is not expected to create the possibility of a new or different kind of accident from any previously analyzed.

3. There has been no reduction in the margin of safety.

Extension of the operating cycle by several months only serves to extend the period of time when the pumps are in standby status. Any deterioration under these circumstances will be slow acting and significant deterioration would be detected by the monthly operating test. Therefore, it is concluded that an extended interval between surveillances will involve no significant reduction in the margin of safety.

(14) Electrical Tunnel, Diesel Generator Building, and Containment Fan Cooler Fire Protection Spray Systems; (A) System Functional Test and (B) Spray Header Visual Inspection

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

(a) It is proposed that the functional test surveillance interval for the Electrical Tunnel, Diesel Generator Building and Containment Fan Cooler Fire Protection Spray Systems be changed from every 18 months (+25%) to every 24 months (25%).

(b) It is proposed that the Spray Header visual inspection interval be revised from every 18 months (25%) to 24 months (+25%).

Extension of the surveillance interval for Electrical Tunnel and Diesel Generator Building Fire Protection System functional tests will have virtually no impact upon the operability of these systems. These systems are accessible during normal operation and other sections of the Technical Specifications (4.14.A.1.g.(i) and 4.14.B.1.a(i)) require that the system valve tests be conducted on an annual (12 month) basis. These annual tests would reveal any system deterioration prior to the conclusion of the proposed extended surveillance interval.

For the Fan Cooler Fire Protection System as well as the Spray Header itself, evaluation of surveillance data from the past five refueling outages indicates minor discrepancies which would not have impaired system operability.

It is therefore concluded that extension of the proposed surveillance interval will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

For the Electrical Tunnel and Diesel Generator Building, extension of the surveillance interval will have a negligible affect as other portions of the Technical Specifications require the same surveillance on an annual basis. For the spray header and the fan cooler fire protection system, historical surveillance data validates operability over an 18 month (+25%) interval which lends confidence to conclude that operability will be maintained over a 24 month (+25%) interval. It is therefore concluded that the possibility of a new or different kind of accident from any accident previously evaluated has not been introduced.

3. There has been no reduction in the margin of safety.

Extension of the surveillance for two systems will have minimal impact as the Technical Specifications impose more frequent testing for system valves on an annual basis. For the Spray Header and Fan Cooler Fire Protection System, as well as the fire protection system for the Diesel Generator Building and Electrical Tunnel, it can be stated that these systems are static existing mainly in a standby capacity under which little deterioration would be expected. Past surveillance data validates system reliability. It is therefore concluded that increasing the time interval between inspections would not involve a significant reduction in the margin of safety.

(15) Penetration Fire Barriers

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the visual inspection frequency of the penetration fire barriers listed in the Technical Specifications be changed from every 18 months (+25%) to every 24 months (+25%).

The fire barrier penetration seals are static devices existing in standby status. Normal environmental conditions exist during normal plant operations. The only deterioration expected would be that due to aging in a normal ambient which would be minimal to non-existent. Evaluation of unacceptable seals detected during surveillances indicates that initial seal installation was faulty and aging was not the cause. Surveillances during four refueling outages confirm this evaluation. Accordingly, it is not expected that the proposed change in surveillance interval will involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Past surveillances indicate that time is not a predominate failure mechanism. In the few unacceptable seals detected, the initial installation procedure has been identified as the cause of the problems. Since the seals are static devices which exist in a standby condition and experience normal ambient conditions during normal operation, this would be the expected conclusion. In addition, the fire barriers are just one means of fire protection. Other means of fire protection exist such as fire alarms, sprinklers and heat detectors which provide defense in depth. Thus, it is concluded that the proposed change in the surveillance interval will not create the possibility of a new or different kind of accident from that previously evaluated.

3. There has been no reduction in the margin of safety.

Aging has not been identified as a principle contributor to seal failures. In addition, there exists additional means of fire protection which provides defense in depth. Therefore, the proposed change in surveillance intervals is not expected to involve a significant reduction in the margin of safety.

(16) Smoke Detectors/Electrical Penetration Area Inside Containment

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the surveillance interval for the smoke detectors located in the electrical penetration area inside containment be revised from every 18 months (+25%) to every 24 months (+25%).

Based on data taken from six surveillances from 1984 through and including 1993, these devices have proven to be highly reliable. No test failures were observed during this period. Based on the guidance contained in Generic Letter 91-04, this demonstration of reliable performance provides an adequate basis to conclude that the proposed extension in the surveillance interval will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Only 3 of the 5 detectors are required during normal operation. Past surveillance data from six refueling outages indicate that it is reasonable to expect all 5 detectors will remain operable over the extended operating cycle which provides margin. It is therefore concluded that the possibility of a new or different kind of accident from any accident previously evaluated has not been created.

3. There has been no reduction in the margin of safety.

The proven reliability of these devices indicates that a significant reduction in the margin of safety would not be involved in extending the operating cycle to 24 months (+25%).

(17) Functional Testing of Containment Sump Pumps

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the functional test of the Containment Sump Pump be changed from every 18 months (+25%) to every 24 months (+25%).

No credit is taken within the FSAR for the Containment Sump Pumps as a means of mitigating the consequences of an accident. During normal operation the pumps serve as a means of quantifying leakage inside Containment and therefore serve a safety function in terms of accident prevention. However, in this capacity they are only one of several systems which are capable of serving this function and their failure would not result in a loss of this capability.

In addition, evaluation of surveillance data back to 1986 indicates, with one exception, that the devices are very reliable. In one instance, the pumps did not actuate or cause operation within the setpoint tolerance but did operate as required. This was determined not to be a time dependent event.

It is therefore concluded that extending the interval between refueling surveillances will not result in a significant increase in the probability or consequences of an accident.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Past surveillances indicate that time is not a predominate failure mechanism. Also, there exists a Technical Specification requirement to perform almost the same surveillance on a monthly basis in addition to every refueling outage. This monthly test diminishes any potential risk in extending the operating cycle. It is therefore concluded that the possibility of a new or different kind of accident from any previously analyzed has not been created.

3. There has been no reduction in the margin of safety.

Past surveillance data indicates that pump operation is reliable. In addition, there are alternate means of providing the safety function fulfilled by these pumps. Also, a monthly test is required which would detect any malfunction prior to the end of an extended operating cycle. It is therefore

concluded that extending the operating cycle by several months will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Michael J. Case, Acting

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: November 2, 1994

Description of amendment request: The proposed amendments will upgrade existing TS 3/4.6.2.1 and TS 3/4.6.2.3 by adapting the combined specification for Containment Spray and Cooling Systems, contained in the Standard Technical Specifications for Combustion Engineering Plants, to the St. Lucie units. The changes account for plant-specific differences and include all related requirements of NUREG-1432, Rev. O, specification 3.6.6A. Accordingly, the proposal is consistent with the Commission's Final Policy Statement on Technical Specifications Improvements (58 FR 39132).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, a determination may be made that a proposed license amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will upgrade the existing Limiting Conditions for Operation (LCOs) associated with the Containment Cooling and Spray Systems to be consistent with NUREG-1432, Standard Technical Specifications for Combustion Engineering Plants. The Containment Cooling and Spray Systems are not initiators of accidents previously evaluated, but are included as part of the success paths associated with mitigating various accidents and transients. The redundancy afforded by Containment Cooling and Spray Systems in conjunction with the requirements of the proposed LCO assures that the safety function of these systems can be accomplished considering single failure criteria. Neither the design nor the safety function of the Containment Cooling and Spray Systems have been altered, and the proposed amendment does not change the applicable plant safety analyses. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant or the modes of operation defined in the facility license. The changes are administrative in nature in that they do not involve the addition of new equipment or the modification of existing equipment, nor do they otherwise alter the design of St. Lucie Unit 1 & 2 systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The safety function of the Containment Cooling System is to provide containment heat removal during normal operation and accident conditions. The safety function of the Containment Spray System is to provide containment heat and iodine removal during accident conditions. The proposed amendment, in conjunction with the redundancy afforded by the Containment Cooling and Spray system design, assures that these safety functions can be accomplished considering single-failure criteria. The bases for required actions and the action completion times specified for inoperable Containment Cooling and Spray trains are consistent with the corresponding specifications in NUREG-1432. The safety analyses for applicable accidents and transients remain unchanged from those previously evaluated and reported in the Updated Final Safety Analysis Report. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the above discussion and the supporting Evaluation of Technical Specification changes, FPL has determined that the proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Mohan Thadani, Acting

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 7, 1994

Description of amendment request: The proposed amendment would change the number of diesel generators (emergency power supply) required to be operable during Mode 5 with the loops filled and Mode 6 with greater than or equal to 23 feet of water above the reactor vessel flange. In addition, changes to certain system specifications that are affected by the changes for the emergency power supply were also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of accidents previously evaluated.

The equipment which is affected by the technical specification changes proposed here are not precursors to any accident postulated to occur in Modes 5 and 6. Therefore, the probability of an accident is not increased. A design review has demonstrated the ability of the required systems to perform their accident mitigation functions for the postulated accidents during Mode 5 and 6 operation. Therefore, it is concluded that an increase in the consequences of the postulated accidents will not result from the proposed Technical Specifications.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The system design, function, and performance is not affected by these specifications. No new equipment interactions are created. Calculations and

Failure Modes and Effects Analyses (FMEA) have been conducted for selected mechanical systems and show there are no failures which would cause situations where applicable accidents would not be mitigated or which would cause new accidents. On this basis, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The electrical power system specifications support the equipment required to be operable, commensurate with the current level of safety, including the equipment requiring a diesel backed power source. The design review results demonstrate that operation in Modes 5 and 6, in accordance with the proposed Technical Specification changes, is acceptable from an accident mitigation standpoint. The basic Modes 5 and 6 plant system functions are not changed. On this basis, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: William D. Beckner

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 7, 1994

Description of amendment request: The proposed amendment would permit both containment personnel airlock doors to be open while moving fuel during refueling operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to Technical Specification 3.9.4, Containment Building Penetrations, would allow the containment personnel airlock to be open during fuel movement and core alterations. The containment personnel airlock is closed during fuel movement and core alterations to prevent the escape of radioactive material in the event of a fuel handling accident. The containment personnel airlock is not an initiator to any accident. Whether the containment personnel airlock doors are open or closed during fuel movement and core alterations has no affect on the probability of any accident previously evaluated.

The proposed change does alter assumptions previously made in evaluating the radiological consequences of the fuel handling accident inside the reactor containment building. The proposed change allows for the containment personnel airlock to be open during refueling. The radiological consequences described in this change are bounded by those given in the South Texas Project Safety Evaluation Report and General Design Criteria 19. All doses for the proposed change are less than the acceptance criteria, therefore, there is no significant increase in the consequences of an accident previously analyzed.

The proposed change will significantly reduce the dose to workers in the containment in the event of a fueling handling accident by accelerating the containment evacuation process. The proposed change will also significantly decrease the wear on the containment personnel airlock doors and, consequently, increase the reliability of the containment personnel airlock doors in the event of an accident.

Since the probability of a fuel handling accident is unaffected by the airlock door positions, and the increased doses do not exceed acceptance limits, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change affects a previously evaluated accident, e.g., a fuel handling accident inside containment. The existing accident has been modified to account for the containment personnel airlock doors being opened at the time of the accident. It does not represent a significant change in the configuration or operation of the plant and, therefore, does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The margin of safety is reduced when the offsite and control room doses exceed the acceptance criteria in the STP SER. As previously discussed in the response to question 1, the offsite and control room doses are below the acceptance criteria. Therefore, this proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: William D. Beckner

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 8, 1994

Description of amendment request: The proposed amendment would require only one of the two battery chargers associated with each Class 1E 125 VDC Channel I and Channel IV to be operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of accidents previously evaluated.

A single charger is able to maintain the operability of Channel I or Channel IV at the design loading with a single failure condition. The proposed change does not alter equipment or assumptions made in previously evaluated accidents. The consequences of previously evaluated accidents are not increased. On this basis, the proposed change does not involve a significant increase in the probability or consequences of accidents previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change involves only the operability requirement for the second battery charger in Channel I and Channel IV. The failure modes and operating modes would then be identical for all four STPEGS Class 1E DC channels. Failure modes and effects analyses already performed for DC Channels II and III would thus become applicable to Channels I and IV also. The change proposed by this Technical Specification revision is bounded by the failure modes and effects analysis provided as Table 8.3-8 of the STPEGS UFSAR [Updated Final Safety Analysis Report]. On this basis, the proposed change does not create the possibility of a new or different

kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change involves only the operability requirement for the second battery charger in Channel I and Channel IV. The number and capacity of DC channels required is not affected by the proposed change. The electrical loads supported by these DC channels are not changed and the duration of their function is not impacted. On this basis, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: William D. Beckner

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 8, 1994

Description of amendment request: The proposed amendment would permit the substitution of an extended range neutron flux monitor for one of the source range neutron flux monitors during refueling operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident as previously evaluated.

During refueling operations, the Source Range channels are used only for monitoring changes in core reactivity, and does not provide inputs for automatically actuated equipment. The same function could be performed by an Extended Range channel. The combination of the present Channel Check and the proposed Channel Calibration are sufficient to ensure that the detectors are capable of monitoring core reactivity changes. By providing the intended redundant core reactivity monitoring, neither the possibility or consequences of an accident previously evaluated are increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

During refueling operations, the Source Range Monitors are used simply as monitoring instrumentation. Extended Range Monitors are capable of performing this function. The combination of the present Channel Check and the proposed Channel Calibration are sufficient to ensure that the detectors are capable of monitoring core reactivity changes.

The proposed change would require revision of STP refueling procedures. However, the physical movement of fuel assemblies is within the scope of current refueling procedures. No new mechanism for fuel misloading or damage or boron dilution would be created by the change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change provides core reactivity monitoring comparable to that provided by the use of the Source Range channels. The Extended Range channel is capable of detecting core reactivity changes and provides the intended redundancy. The combination of the present Channel Check and the proposed Channel Calibration are sufficient to ensure that the detectors are capable of monitoring core reactivity changes. No margin of safety is compromised by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: William D. Beckner

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine YankeeAtomic Power Station, Lincoln County, Maine

Date of amendment request: October 24, 1994

Description of amendment request: The proposed amendment would modify Technical Specifications Table 4.1-3 surveillance requirements for new emergency feedwater flow instrumentation. Specifically, the currently installed analog feedwater flow transmitters would be replaced by new, digital-type flow transmitters. The new digital flow emergency feedwater flow transmitters are continuously self-checking and have a recommended calibration interval of 9 years. The licensee proposes to verify flow whenever the system operates and send one transmitter back to the manufacturer for recalibration every refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's analysis is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Performance of Technical Specifications Table 4.1-3 (items 10 a and b) ensures the emergency feedwater flow transmitters are operable when required. The proposed change will continue to ensure operabililty and therefore will not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Emergency feedwater flow transmitter operability verification is maintained, with no change to the system's configuration. Thus, there is no unique operating condition that could adversely affect system functional performance.

3. The proposed change does not involve a significant reduction in a margin of safety.

There is no change to any Final Safety Analysis Report Chapter 14 (Safety Analysis) event. There is no change to the demonstration of component operability; thus, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, Maine 04011

NRC Project Director: Walter R. Butler

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 7, 1994

Description of amendment request: The proposed amendment would remove from the Technical Specifications certain audit responsibilities of the Nuclear Safety Audit Review Committee and certain review responsibilities of the Station Operation Review Committee relating to the Emergency Plan and Security Plan and their implementing procedures. The proposed changes are consistent with the guidance of Generic Letter 93-07.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes do not affect the manner by which the facility is operated and do not change any facility design feature or equipment. Since there is no change to the facility or operating procedures, there is no affect upon the probability or consequences of any accident previously analyzed.

B. The changes do not create the possibility of a new or different kindof accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated. The proposed changes merely affect audit and review responsibilities and their deletion or relocation to other controlled documents does not introduce new or different accident scenarios.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, NH 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, MA 02110-2624.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: October 14, 1994

Description of amendment request: The proposed change clarifies the low pressure coolant injection (LPCI) requirements as required by Technical Specification 4.5.A.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed change in accordance with 10 CFR 50.92 and concluded that the change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The LPCI flow surveillance requirement to demonstrate that three pumps can deliver 15,000 gpm does not relate to any previously analyzed accident. There are no accident scenarios which rely upon three pumps or 15,000 gpm. The existing scenarios are more limiting in that they rely on, at the most, two LPCI pumps. The actual testing of the pumps in accordance with the [inservice testing] IST program and Technical Specification 4.13 will not change. The testing of the pumps currently performed demonstrates that LPCI will function to mitigate the postulated accidents. Therefore, the elimination of the requirement to demonstrate that three pumps can deliver 15,000 gpm will not involve an increase in the probability or consequence of any previously evaluated accident.

The elimination of a requirement to test the LPCI header instrumentation can not result in an increase to the probability or consequence of an accident, since no such instrumentation exists, or is required.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change will remove a requirement to perform a mathematical evaluation that provides no safety benefit. There is no change in the test methodology currently performed. All four LPCI pumps are tested. Deleting the requirement to verify that three LPCI pumps can produce 15,000 gpm flow does not create the possibility of a new or different type of accident.

Deleting the requirement to test the LPCI spray header instrumentation can not create the possibility of a new or different kind of accident, since there is no LPCI header instrumentation. This change corrects an error which was introduced by an earlier License Amendment.

3. Involve a significant reduction in the margin of safety.

This change to the LPCI testing requirements does not change any of the actual testing, or individual component requirements which exist for the LPCI system. The change to remove the three pump, 15,000 gpm flow requirement eliminates the need to calculate a value which provides no relevant information in ascertaining the ability of the LPCI system to perform its required safety function. The existing testing ensures performance of the LPCI subsystem in accordance with the accident analysis requirements. The intent of the Technical Specification Surveillance Requirement remains unchanged. Elimination of the requirement to test the LPCI header instrumentation corrects an error introduced in an earlier License Amendment. No LPCI header instrumentation exists, therefore, no credit was taken for such instrumentation in determining the margin of safety.

This change can not involve a significant reduction in the margin of safety since there are no changes to the surveillance requirements for any of the individual components of the LPCI system.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: October 17, 1994, as supplemented October 27, 1994

Description of amendment requests: The proposed amendments would change the submittal frequency of the Radioactive Effluent Release Report from semiannual to annual in accordance with 10 CFR 50.36a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated

The proposed license amendments are requested to implement a revision to 10 CFR 50.36a. The requested amendment[s] does not alter any administrative controls over radioactive effluents, nor do they affect any accident evaluations. Also, the requested amendments do not involve any physical alterations to the plant with respect to radioactive effluents. The proposed changes would only affect the reporting requirements concerning routine data for radioactive effluents.

Therefore, the probability or consequences of an accident previously evaluated are not affected by any of the proposed amendments.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed

The proposed license amendments are requested to implement a revision to 10C FR 50.36a. The requested amendment[s] does not alter any administrative controls over radioactive effluents, nor do they involve any physical alterations to the plant with respect to radioactive effluents. Also, the requested amendments do not change the method by which any safety-related system performs its function. The proposed changes would only affect the reporting requirements concerning routine data for radioactive effluents.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created.

3. The proposed amendment will not involve a significant reduction in the margin of safety

The proposed license amendments are requested to implement a revision to 10 CFR 50.36a. The requested amendment[s] does not alter any administrative controls over radioactive effluents, nor do they involve any physical alterations to the plant with respect to radioactive effluents. The proposed changes would only affect the reporting requirements concerning routine data for radioactive effluents. The operation of systems and equipment remains unchanged.

Therefore, a significant reduction in the margin of safety would not be involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: October 25, 1994

Description of amendment request: The amendment would add to the Susquehanna Units 1 and 2 Technical Specifications, isolation signals to Table 3.6.3-1 for the containment isolation valves on the sample lines for the containment radiation monitoring (CRM) and wetwell sample lines. This change is based on the licensee's design change for installation of a new CRM and wetwell sample system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of the new CRM and Wetwell Sample System does not affect any of the postulated initiating events identified in Chapter 6 and 15 of the FSAR, the Design Assessment Report, the current Reload Analysis or the NRC Safety Evaluation Report (NUREG 0776).

The new CRM and Wetwell Sample System with separate containment sample lines is isolated from the primary containment under accident conditions. The power and control-power to the CRM from the Class 1E Division I and Division II sources is through electrical isolation schemes so that failure(s) in the CRM under accident conditions is isolated from the Class 1E systems.

The addition of a new CRM and Wetwell Sample System with separate sample lines and isolation valves does represent a change in the probability of occurrence of a malfunction of equipment. The addition of the auxiliary relay to the Division I and Division II CAC System containment isolation logic does represent the source of another potential malfunction in the logic due to the additional relay in the circuit. However, the increase in probability due to the additional relay is considered to be so small or insignificant that the change is within the error bounds associated with the original design calculations and does not constitute a significant increase in probability of the overall system malfunction.

Thus, the addition of a new CRM and Wetwell Sample System does not significantly increase the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety, as previously evaluated in the SAR.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Chapter 6 and 15 of the FSAR, the Design Assessment Report, the current Reload Analysis and NUREG-0776 were reviewed to determine if the proposed action had the potential of creating a postulated initiating event which was not within the spectrum of events which transient or anticipated operational occurrences and accident conditions were analyzed. The review did not identify a postulated initiating event which would create the possibility for an accident of a different type.

A random single failure in the CRM A or CRM B does not create a malfunction of a different type. A random single failure in the existing containment isolation circuitry, the new isolation valve control circuitry or the new valve position indication circuitry for the new containment isolation valves does not create a malfunction of a different type. The consequences of random single failure of the CRM or the CRM and Wetwell containment isolation valve isolation signal, control and indication circuitry is the same as the existing consequences.

Thus, the addition of a new CRM and Wetwell Sample System does not create a possibility for an accident or malfunction of a new or different type.

3. Involve a significant reduction in a margin of safety.

The operability of the primary containment isolation valves for the sample lines to the new CRMs and Wetwell Sample Rack is governed by Technical Specification Section 3/4.6.3 entitled "Containment Systems, Primary Containment Isolation Valves" with Table 3.6.3-1 establishing the maximum isolation time. The bases for operability of the primary containment isolation valves is to ensure that the containment atmosphere is isolated from the outside environment in the event of a release of radioactive material to the containment atmosphere or pressurization of the containment. This is consistent with GDC 54 through 57 of 10 CFR 50, Appendix A. The bases for the containment isolation within the time limits specified in Table 3.6.3-1 is for those isolation valves designed to close automatically to ensure that the release of radioactive material to the environment is consistent with the assumptions used in the analyses for a LOCA. The new CRM and Wetwell Sample Rack sample line isolation valves are solenoid valves which close immediately on an accident signal. The proposed action does not affect the operability requirements of Section 3/4.6.3. The margin of safety as defined in the Technical Specification for the containment isolation valves is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: November 11, 1994

Brief description of amendments: The proposed amendment would modify the technical specifications (TS) by deleting accelerated testing and special reporting requirements for CPSES Units 1 and 2 emergency diesel generators. These changes are based on Generic Letter 94-01, "Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators," dated May 31, 1994.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Deletion of the requirement for special reporting of EDG failures has no relation to probability or consequences of accidents. Therefore, deletion of the requirement for special reporting of EDG failures does not involve a significant increase in the probability or consequences of an accident previously evaluated.

There are no initiating events in accidents previously evaluated that involve testing of EDGs. Therefore, deletion of accelerated testing of EDGs does not involve a significant increase in the probability of an accident previously evaluated.

A reduction in the number of test starts decreases EDG component stress and wear and decreases unavailability time for maintenance and pre and post run checks. The resulting change in EDG reliability and availability is an improvement toward ensuring the EDGs are capable of fulfilling their functional requirement to provide electric power for safe shutdown of the plant during loss of offsite power. Furthermore, implementation of the maintenance rule provisions for performance monitoring and root cause analysis for failures as a basis for establishing corrective actions establish an alternate reliability basis that is at least equivalent to that established by accelerated testing. Therefore, deletion of accelerated testing of EDGs does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Deletion of the requirement for special reporting of EDG failures introduces no new failure modes for the EDGs or other plant systems and therefore has no relation to creation of accidents. Therefore, deletion of the requirement for special reporting of EDG failures does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The frequency at which EDG testing occurs does not affect the potential failure modes of the EDGs, which have already been assessed in the CPSES design. Therefore, deletion of accelerated testing of EDGs does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Acceptance limits and failure values are not affected by the requirement for special reporting of EDG failures. Therefore, deletion of the requirement for special reporting of EDG failures does not involve a significant reduction in a margin of safety.

The margin of safety impact associated with accelerated testing relates to EDG reliability and availability. A reduction in the number of test starts decreases EDG component stress and wear and decreases unavailability time for maintenance and pre and post run checks. The resulting change in EDG reliability and availability is an improvement toward ensuring the EDGs are capable of fulfilling their functional requirement to provide electric power for safe shutdown of the plant during loss of offsite power. Furthermore, implementation of the maintenance rule provisions for performance monitoring and root cause analysis for failures as a basis for establishing corrective actions establish an alternate reliability basis that is at least equivalent to that established by accelerated testing. Therefore, deletion of accelerated testing of EDGs does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, DC 20036

NRC Project Director: William D. Beckner

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: November 11, 1994

Brief description of amendments: The proposed amendment would provide for cycle-specific allowances to account for increases in the Heat Flux Hot Channel Factor between monthly surveillances.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes provide for the use of cycle-specific allowances to account for $F^{\cong 2}Q^c(z)$ increases between surveillances. No hardware or setpoint changes are involved; therefore, the changes have no impact on the probability of occurrence of any accident previously analyzed.

The proposed changes ensure that $F^{\cong 2}Q^c(z)$ remains within its limit. Thus, the changes do not increase the consequences of any accident previously analyzed.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes provide for the use of a cycle-specific allowances to account for $F^{\cong 2}Q^c(z)$ increases between surveillances. The proposed changes do not involve any hardware or setpoint changes. Therefore the changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed changes do not affect the failure values of any system or any event acceptance criteria. Higher cycle-specific allowances ensure that remains below its limit between surveillances and within the bounds considered in the safety analyses. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, DC 20036

NRC Project Director: William D. Beckner

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: November 8, 1994

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications to allow application of a voltage-based repair limit for the steam generator (SG) tube support plate (TSP) intersections experiencing outside diameter stress corrosion cracking (ODSCC).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

This proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free span tubing (no TSP restraint) at room temperature conditions show burst pressures in excess of 5,000 psig for indications of ODSCC with voltage measurements as high as 19 volts. Burst testing performed on five intersections pulled from the Kewaunee SGs with up to a 2 volt indication showed measured tube burst in the range of 9,537 to 9,756 psig. Burst testing performed on pulled tubes from other plants with up to 7.5 volt indications show burst pressures in excess of 6,300 psi at room temperatures. Correcting for the effects of temperature on material properties and the minimum strength levels, tube burst capability significantly exceeds the safety factor requirements of RG 1.121.

Tube burst criteria are inherently satisfied during normal operating conditions due to the presence of the TSPS. Test data indicates that tube burst cannot occur within the TSP, even for tubes with through wall EDM notches 0.75 inch long, when the notch is adjacent to the TSP. Since tube burst is precluded during normal operating conditions, the criterion that must be satisfied to demonstrate adequate tube integrity is a safety margin of 1.43 times MSLB pressure differential. From Figure 3-2 of EPRI report TR-100407, the BOC structural limit for 7/8 inch diameter tubing is 9.6 volts. Applying an allowance of 20% for NDE uncertainty and 50% for crack growth rate over an operating cycle results in a voltage repair limit of 5.6 volts. The proposed repair limit of 2 volts is very conservative when compared to the 5.6 volts taking into account the low average growth rates experienced at Kewaunee and the high tube burst pressures.

Relative to the expected leakage during accident condition loadings, a plant specific calculation was performed to determine the maximum primary-to-secondary leakage during a postulated MSLB event. The evaluation considered both pre-accident and accident initiated iodine spikes. The results of the evaluation show that the accident spike yielded the limiting leak rate. This case was based on a 30 rem thyroid dose at the site boundary and initial primary and secondary coolant activity levels of 1.0 uCi/gm and 0.1 uCi/gm dose equivalent iodine-131, respectively. A leak rate of 34.0 gpm was determined to be the upper limit for allowable primary to secondary leakage in the SG in the faulted loop. The SG in the intact loop was assumed to leak at a rate of 0.1 gpm (150 gpd).

Application of the voltage-based repair limit will be supplemented with a projected EOC MSLB leakage calculation and conditional burst probability assessment. The methodology for performing these calculations will be consistent with that discussed in the draft GL until final guidance is published. Should the projected MSLB leakage be exceeded indications will be repaired or removed from service until the projected leakage is less than or equal to 34.0 gpm.

Application of the voltage-based repair limit will not adversely affect SG tube integrity. Therefore, the proposed amendment will not increase the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any previously evaluated.

Implementation of the proposed voltage-based repair limit will not reduce the overall safety or functional requirements of the SG tube bundles. The tube burst criteria will be satisfied during normal operating conditions by the presence of the TSPs. The RG 1.121 criteria that must be satisfied during accident loading conditions is 1.43 times MSLB differential pressure. Conservatively, the existing data base of burst testing shows that the tube burst margins can be satisfied with bobbin coil signal amplitudes of about 8.82 volts or less regardless of the depth of tube wall penetration.

The proposed repair criteria will be supplemented with a reduced operating leakage requirement of 150 gpd average through either SG to preclude the potential for excessive leakage during operating conditions. The 150 gpd restriction will provide for timely leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. The operating leakage limit is based on leak-before break considerations, critical crack length and predicted leakage.

The SG tube integrity will continue to be maintained through inservice inspections and primary-to-secondary leakage monitoring. Therefore, the proposed change will not create the possibility of a new or different kind of accident.

3) Involve a significant reduction in the margin of safety.

Application of the voltage-based repair criteria has been demonstrated to maintain tube integrity commensurate with the RG 1.121 criteria. RG 1.121 describes a method acceptable to the staff for meeting GDCs 2, 14, 15, 31 and 32. This is accomplished by determining the limiting degradation of SG tubing as established by inservice inspection, beyond which tubes should be removed from service. Upon implementation of the repair criteria, even under the worst case conditions, the occurrence of ODSCC at the TSPs is not expected to lead to a SG tube rupture event during normal or faulted conditions. The most limiting event would be a potential increase in leakage during a MSLB event. Excessive leakage during a MSLB is precluded by verifying that the expected EOC crack distribution of ODSCC indications at TSP locations would result in an acceptably low primary-to-secondary leakage. Therefore, the radiological consequences from tubes remaining in service is a small fraction of the 10 CFR 100 limits.

The combined effects of a LOCA plus SSE on the SGs were assessed as required by GDC 2. This issue was addressed for the Kewaunee SGs through the application of leak-before-break (LBB) principles to the primary loop piping. Based on the results of this analysis, it is concluded that the LBB is applicable to the Kewaunee primary loops and, thus, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design basis of the plant. Excluding breaks in the primary loops, the LOCA loads from the large branch lines were also assessed and found to be of insufficient magnitude to result in SG tube collapse. Based on these analysis results, no tubes are expected to collapse or deform to the degree that secondary-to-primary in-leakage would be increased over currently expected levels. On this basis no tubes need to be excluded from the voltage-based repair criteria for reasons of deformation resulting from combined LOCA and SSE loadings.

Addressing the RG 1.83 considerations, implementation of the voltage-based repair criteria will include a 100% bobbin coil probe inspection of all TSP intersections with known ODSCC down to the lowest cold leg TSP identified. This will be supplemented by a reduced operating leakage limit, enhanced eddy current data analysis guidelines, MRPC inspection requirements and a projected EOC voltage distribution. It is concluded that the proposed change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: Leif J. Norrholm

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual

notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: August 8, 1994

Brief description of amendment request: The proposed amendment would modify Technical Specification (TS) 4.0.5.a. to delete the requirement to obtain prior written relief from the NRC for inservice inspection (ISI) and inservice testing (IST) of components conducted pursuant to 10 CFR 50.55a. This change would provide relief from the ASME Code requirement in the interim between the submittal of a relief request and the NRC's issuance of a safety evaluation regarding the relief request. The change would allow the plant to operate in accordance with a proposed relief request while the NRC staff completed its review of the relief request. The licensee has also proposed to modify TS 4.0.5.b. to add a definition for biennial or every-2-year inspection and testing activities. The definition of biennial or every 2 years will be at least once per 731 days.Date of individual notice in Federal Register: November 14, 1994 (59 FR 56558)

Expiration date of individual notice: December 14, 1994

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson SteamElectric Plant, Unit No. 2, Darlington County, South CarolinaDate of application for amendment: June 29, 1994

Brief description of amendment: The amendment deletes the requirement to perform alternate train testing to demonstrate that other, similar, safety-related components are operable when components are found, or made, inoperable in the safety injection, residual heat removal, and containment spray systems. The surveillance requirements, which the licensee refers to as accelerated testing requirements, affect the safety injection (SI) pumps, residual heat removal (RHR) pumps, containment spray (CS), SI, RHR and CS flow paths.

Date of issuance: November 21, 1994

Effective date: November 21, 1994

Amendment No. 153

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: August 3, 1994 (59 FR 39581) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, 147 West College, Hartsville, South Carolina 29550

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: June 29, 1992, as supplemented February 22, 1994

Brief description of amendment: The amendment revised TS Sections 3/4.3, "Instrumentation," 3/4.4.2, "Safety/Relief Valves," and associated Bases to increase the surveillance test intervals and allowable out-of-service times for specific safety-related instrumentation.

Date of issuance: November 22, 1994

Effective date: November 22, 1994

Amendment No. 67

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 13, 1994 (59 FR 17605) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station,Units 1 and 2, Rock Island County, IllinoisDate of application for amendments: October 15, 1992

Brief description of amendments: The proposed amendments would revise the Dresden and Quad Cities Technical Specification (TS) 3/4.4 to revise the sodium pentaborate solution concentrations for the Standby Liquid Control System (SLCS) storage tanks based on net positive suction head test results.

Date of issuance: November 16, 1994

Effective date: November 16, 1994

Amendment Nos.: 130, 124, 151, and 147

Facility Operating License Nos. DPR-19, DPR-25, DPR-29, and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 9, 1992 (57 FR

58245) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 16, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: For Dresden, The Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; For Quad Cities, The Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Consolidated Edison Company of New York, Docket No. 50-247, Indian PointNuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: October 29, 1993, as supplemented on March 28, 1994, and November 8, 1994.

Brief description of amendment: The amendment revises the surveillance intervals for the Volume Control Tank Level Instrument, the Containment High Range Radiation Monitors, the Safety Injection System Electrical Loading, the Safety Injection System, and the Reactor Coolant System Subcooling Margin Monitors to accommodate a 24-month fuel cycle. These revisions are being made in accordance wih the guidance provided by Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

Date of issuance: November 16, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 178

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 20, 1994 (59 FR 37067) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 25, 1994

Brief description of amendments: The amendments revise the testing interval for auxiliary feedwater (AFW) system pumps from monthly to quarterly on a staggered test basis. The amendments are consistent with the guidance in NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements" and Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation." In addition, a note is incorporated from NUREG-1431, "Revised Standard Technical Specifications, Westinghouse Plants" into the TS clarifying that the turbine-driven AFW pump cannot be tested until the required pressure exists in the secondary side of the steam generator.

Date of issuance: November 9, 1994

Effective date: November 9, 1994

Amendment Nos.: 151 and 133

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1994 (59 FR 49426) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 9, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: March 19, 1993, augmented August 18, 1994.

Brief description of amendment: This amendment allows a reduction in Reactor Coolant System design flowrate from the current value of 370,000 gpm to 355,000 gpm in Technical Specifications Figure 2.1-1 and Tables 2.2-1 and 3.2-1.

Date of issuance: November 25, 1994

Date of issuance: November 25, 1994

Effective date: November 25, 1994

Amendment No.: 130

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25855) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 25, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 29, 1994, as supplemented by letter dated September 8, 1994.

Brief description of amendments: The amendments revise the technical specifications to permit revision of the maximum allowable power range neutron flux high setpoint when one or more main steam safety valves are inoperable. In addition, new algorithm used to calculate the revised setpoint values is incorporated into the Bases for the technical specifications.

Date of issuance: November 22, 1994

Effective date: To be implemented within 30 days of issuance

Amendment Nos.: Unit 1 - Amendment No. 66; Unit 2 - Amendment No. 55

Facility Operating License Nos. NPF-76 and NPF-80. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 8, 1994 (59 FR 29628) The additional information contained in the supplemental letter dated September 8, 1994, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 22, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center,Linn County, Iowa

Date of applications for amendment: June 4, 1993, as supplemented February 4, 1994, and May 6, 1994.

Brief description of amendment: The amendment revised the Technical Specifications (TS) by changing the requirements of the TS Section 3.6, "Primary Systems Boundary," adding definitions into Section 1.0, "Definitions," and revising Bases Section 3/4.6. These changes improved clarity and provided consistency of the TS with the Standard TS (NUREG-1202). Typographical and administrative corrections were also made in Section 3.6.

Date of issuance: November 17, 1994
Effective date: November 17, 1994, and to be implemented within 120 days
Amendment No.: 203
Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39052). The May 6, 1994, application, repeated a TS change included in the June 4, 1993, application, and proposed changes to the TS Bases. The information in the February 14, 1994, supplement, did not change theinitial no significant hazards determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 1994. No significant hazards consideration comments received: No.
Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: July 12, 1994
Brief description of amendment: The proposed amendment changes the requirement to perform the surveillance test for the channel functional test Rod Block Monitor, Flow-biased Average Power Range Monitor and Recirculation Flow instruments from within 24 hours prior to startup to after the reactor is in the RUN mode, but prior to when each system is assumed to function in the plant safety analysis.
Date of issuance: November 18, 1994
Effective date: November 18, 1994, to be implemented within 30 days of issuance
Amendment No.: 204
Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 31, 1994 (59 FR 45025) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 1994.No significant hazards consideration comments received: No.
Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401

South Carolina Electric & Gas Company, South Carolina Public ServiceAuthority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: October 29, 1993, as supplemented March 11, 1994, May 18, 1994, September 20, 1994, and October 20, 1994
Brief description of amendment: The proposed changes support the installation of new steam generators at Summer Station. The changes involve:
(1) alterations to the core operating limits
(2) changes to various reactor trip setpoints
(3) deletion of the negative flux rate trip
(4) removal of references to specific correlations used in the departure from nucleate boiling (DNB) analyses
(5) changes to the steam/feedwater flow mismatch activation specification
(6) changes to shutdown limits
(7) changes to instrument uncertainty allowances
(8) a change to the methodology for reactor coolant system (RCS) flow determination
(9) modifications to DNB parameters
(10) a change to the engineered safety features actuation system setpoints for steam generator water levels
(11) removal of the F^* and L^* criteria
(12) addition of a requirement for a first inservice inspection for the new steam generators
Date of issuance: November 18, 1994
Effective date: November 18, 1994
Amendment No.: 119
Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** February 16, 1994 (59 FR 7968) The May 18, 1994, September 20, 1994, and October 20, 1994 submittals contained explanatory information and did not change finding of nos significant hazards consideration as published in the FEDERAL REGISTER. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

South Carolina Electric & Gas Company, South Carolina Public ServiceAuthority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: July 20, 1994
Brief description of amendment: The amendment changes the Technical Specifications (TS) to modify TS Table 2.2-1, Reactor Trip System Instrumentation Setpoints, and Table 3.3-4, Engineered Safety Features Actuation System Instrumentation Trip Setpoints and several associated bases. The change would remove specific rack and sensor allowable drift values by removing three columns from the tables.
Date of issuance: November 18, 1994
Effective date: November 18, 1994
Amendment No.: 120
Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** September 19, 1994 (59 FR 47181) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: March 5, 1993, as supplemented by letter dated September 22, 1994
Brief description of amendments: These amendments propose to revise Technical Specification (TS) 3/4.7.1.1, "Main Steam Safety Valves," and the associated Bases to (1) increase the as-found setpoint tolerance of Table 3.7-1 for the Main Steam Safety Valves (MSSVs) from +/- 1 percent to +2 percent and -3 percent; (2) add a footnote to Table 3.7-1 to indicate that the setpoint tolerance for the lowest set pair of MSSVs will be +1 percent and -3 percent; (3) add a footnote to TS 3.7.1.1 and revise footnote 1 of Table 3.7-1 to clarify that the MSSVs will be left at the lift setting according to Table 3.7-1 within a +/-1 percent tolerance following inservice testing; (4) add an ACTION statement requiring the plant to be in HOT STANDBY within 6 hours and in HOT SHUTDOWN within the following 12 hours for the case of less than five MSSVs operable per operable steam generator; (5) require the plant to be in "HOT SHUTDOWN within the following 12 hours" instead of "COLD SHUTDOWN within the following 30 hours" per the existing ACTION statement; (6) revise the title of column 1 of Table 3.7-2 to read "Number of Operable Safety Valves per Operable Steam Generator," instead of "Maximum Number of Inoperable Safety Valves on Any Operating Steam Generator, for better readability; and (7) delete the ORIFICE SIZE column of Table 3.7-1.

Date of issuance: November 23, 1994

Effective date: As of the date of its issuance and must be fully implemented no later than 30 days from the date of issuance.

Amendment Nos.: 114 and 103

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34093) The additional information contained in the supplemental letter dated September 22, 1994, served to clarify the amendments, was within the scope of the initial notice, and did not affect the Commission's proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 23, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 9, 1994 (TS 94-08)

Brief description of amendments: The amendments add the main steam valve vaults to the exclusion areas where containment penetration integrity is not required to be verified once every 31 days for penetrations that are secured in the closed position.

Date of issuance: November 22, 1994

Effective date: November 22, 1994

Amendment Nos.: 191 and 183

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** October 12, 1994 (59 FR 51630) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: July 14, 1994

Brief description of amendments: These amendments modify the current Technical Specifications having cycle-specific parameter limits in the Core Operating Limits Report.

Date of issuance: November 15, 1994

Effective date: November 15, 1994Amendment Nos. 194 and 194

Facility Operating Licen se Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 12, 1994 (59 FR 51630) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee NuclearPower Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 17, 1994

Brief description of amendment: The amendment revises the TS by separating the specification for the Internal Containment Spray (ICS) and the Spray Additive Systems into two distinct specifications. The amendment also removes the requirement that for a spray train to be operable, a spray pump suction flow path from the additive tank is needed. In addition, the allowable out-of-service time for the Spray Additive System is increased from 48 hours to 72 hours.

Date of issuance: November 18, 1994

Effective date: November 18, 1994

Amendment No.: 113

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 20, 1994 (59 FR 37090) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Dated at Rockville, Maryland, this 30th day of November 1994.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects - III/IV,Office of Nuclear Reactor Regulation

[FR Doc. 94–29925 Filed 12–6–94; 8:45 am]

BILLING CODE 7590–01–F

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of Form RI 25–37

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 25–37, Evidence to Prove Dependency of a Child, is designed to collect sufficient information for the Retirement and Insurance Group to be able to determine whether the surviving child of a deceased Federal employee is eligible to receive benefits as a dependent child.

Approximately 250 RI 25–37 dependency determinations are made annually. It requires about 1 hour to assemble the needed documentation. The annual burden is 250 hours.

For copies of this proposal, contact Doris Benz on (703) 908–8564.

DATES: Comments on this proposal should be received on or before January 6, 1995.

ADDRESSES: Send or deliver comments to—.

Lorraine E. Dettman, Chief Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–30011 Filed 12–6–94; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Scheduled A and B, and placed under Schedule C in the excepted service, as required by

Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0940.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on November 15, 1994 (59 FR 58860). Individual authorities established or revoked under Schedules A and B and established under Schedule C between October 1 and October 31, 1994, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, was published on October 30, 1994 (59 FR 50278).

Schedule A

The following exceptions were established:

Community Development Financial Institutions Fund

All positions in the Fund and positions created for the purpose of establishing the Fund's operations in accordance with the Community Development Banking and Financial Institutions Act of 21994, except for any positions required by the Act to be filled by competitive appointment. No new appointments may be made under this authority after September 22, 1996. Effective September 22, 1996.

The Following Schedule A Authorities were revoked:

Department of the Treasury, U.S. Customs Service

Positions of part-time, intermittent, or temporary Customs Inspectors and Port Directors in Alaska paid at a rate not above GS–9 and for not more than 130 working days in a Service year.

Positions at GS–9 and below of Customs Enforcement Officer, Customs Inspector, Customs Marine Clerk/Officer and other positions, with duties of a continuing nature that require the part-time or intermittent service of an employee for not more than 700 hours in his/her service year. Effective October 1, 1994.

Schedule B

No Schedule B authorities were established or revoked during October 1994.

Schedule C

Agency for International Development

Special Assistant to the Assistant Administrator, Bureau of Global Programs, Field Support and Research. Effective October 21, 1994.

Appalachian Regional Commission

Special Assistant to the Federal Co-Chairman. Effective October 28, 1994.

Senior Policy Advisor to the Federal Co-Chairman. Effective October 28, 1994.

Commodity Futures Trading Commission

Administrative Assistant to the Chairman. Effective October 21, 1994.

Corporation for National and Community Service

Special Assistant to the Executive Vice President and Managing Director of the Corporation for National Community Service. Effective October 7, 1994.

Department of Agriculture

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective October 31, 1994.

Department of Commerce

Confidential Assistant to the Under Secretary for Export Administration, Bureau of Export Administration. Effective October 28, 1994.

Special Assistant to the Deputy Assistant Secretary for Program Operation. Effective October 28, 1994.

Department of Defense

Special Assistant to the Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support. Effective October 3, 1994.

Program Assistant to the Deputy Under Secretary of Defense for Environmental Security. Effective October 7, 1994.

Special Assistant to the Principal Deputy Under Secretary of Defense for Policy. Effective October 18, 1994.

Defense Fellow to the Deputy Assistant Secretary of Defense, Humanitarian and Refugee Affairs. Effective October 21, 1994.

Special Assistant to the Deputy Assistant Secretary, Policy Planning Coordinator. Effective October 21, 1994.

Confidential Assistant to the General Counsel, Department of Defense. Effective October 27, 1994.

Secretary to the Assistant Secretary of Defense, Strategy and Requirements. Effective October 28, 1994.

Department of Education

Special Assistant to the Under Secretary. Effective October 5, 1994.

Department of Energy

Special Assistant to the Assistant Secretary for Policy. Effective October 4, 1994.

Staff Assistant to the Director, Office of Strategic Planning and Analysis. Effective October 4, 1994.

Staff Assistant to the Associate Deputy Secretary for Field Management. Effective October 4, 1994.

Confidential Staff Assistant to the Director, Office of Economic Impact and Diversity. Effective October 11, 1994.

Special Assistant for Regulatory Compliance to the Deputy Assistant Secretary for Compliance and Program Coordination. Effective October 27, 1994.

Department of Health and Human Services

Senior Advisor to the Director, Indian Health Service. Effective October 7, 1994.

Director, Division of Intergovernmental Affairs to the Director, Office of Public Affairs. Effective October 13, 1994.

Special Assistant for Legislative Affairs to the Director, U.S. Office of Consumer Affairs. Effective October 14, 1994.

Special Assistant to the Counselor to the Secretary. Effective October 25, 1994.

Special Assistant to the Deputy Assistant Secretary for Policy and External Affairs. Effective October 26, 1994.

Department of Housing and Urban Development

Executive Assistant to the President, Government National Mortgage Association. Effective October 3, 1994.

Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing Recovery. Effective October 6, 1994.

Staff Assistant to the Assistant Secretary for Administration. Effective October 26, 1994.

Department of the Interior

Special Assistant to the Deputy Chief of Staff. Effective October 7, 1994.

Department of Justice

Assistant to the Attorney General. Effective October 17, 1994.

Secretary (OA) to the United States Attorney, Southern District of Mississippi. Effective October 20, 1994.

Staff Assistant to the Director, Office of Public Affairs. Effective October 21, 1994.

Special Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective October 31, 1994.

Department of Labor

Chief of Staff to the Director, Women's Bureau. Effective October 7, 1994.

Chief of Staff to the Assistant Secretary for Labor. Effective October 7, 1994.

Special Assistant to the Assistant Secretary, Employment Standards Administration. Effective October 17, 1994.

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 18, 1994.

Special Assistant to the Assistant Secretary for Policy. Effective October 21, 1994.

Department of State

Special Assistant to the Senior Coordinator. Effective October 17, 1994.

Member, Policy Planning Staff to the Director, Policy Planning Staff. Effective October 17, 1994.

Member, Policy Planning Staff to the Director, Policy Planning Staff. Effective October 17, 1994.

Secretary (Typing) to the Assistant Secretary, Legislative Affairs. Effective October 17, 1994.

Staff Aide (Typing) to the Special Advisor to the Secretary. Effective October 17, 1994.

Department of Transportation

Public Affairs Officer to the Administrator, Federal Railroad Administration. Effective October 13, 1994.

Director of Intergovernmental Affairs to the Administrator, National Highway Traffic Safety Administration. Effective October 13, 1994.

Special Assistant to the Assistant Secretary for Budget and Programs. Effective October 21, 1994.

Director, Office of Intergovernmental Affairs and Consumer Affairs to the Assistant Secretary for Governmental Affairs. Effective October 28, 1994

Department of the Treasury

Special Assistant to the Assistant Secretary for Economic Policy. Effective October 21, 1994.

Executive Assistant to the Director of the Mint. Effective October 28, 1994.

Equal Employment Opportunity Commission

Special Assistant to the Commissioner. Effective October 14, 1994.

Confidential Assistant to the Director, Legal Counsel. Effective October 21, 1994.

Export-Import Bank of the United States

Confidential Assistant to the President and Chairman. Effective October 21, 1994.

Federal Labor Relations Authority

Public Affairs Officer to the Chairman. Effective October 17, 1994.

Federal Maritime Commission

Counsel to the Commissioner. Effective October 7, 1994.

Counsel to the Chairman, Federal Maritime Commission. Effective October 27, 1994.

Federal Mine Safety and Health Review Commission

Confidential Assistant to the Commissioner. Effective October 7, 1994.

Attorney-Advisor to the Chairman. Effective October 14, 1994.

Federal Trade Commission

Special Assistant to the Commissioner. Effective October 18, 1994.

Interstate Commerce Commission

Executive Assistant to a Commissioner. Effective October 14, 1994.

Staff Advisor (Management) to the Commissioner. Effective October 14, 1994.

National Transportation Safety Board

Director, Office of Public Affairs to the Chairman. Effective October 27, 1994.

Director, Office of Government Affairs to the Chairman. Effective October 31, 1994.

Office of the United States Trade Representative

Congressional Affairs Specialist to the Assistant United States Trade Representative for Congressional Affairs. Effective October 7, 1994.

Securities and Exchange Commission

Director, Office of Consumer Affairs to the Chairman. Effective October 21, 1994.

U.S. Arms Control and Disarmament Agency

Director of Public Information to the Director of Arms Control and Disarmament Agency. Effective October 5, 1994.

Secretary to the Assistant Director of the Nonproliferation and Regional Arms Control Bureau. Effective October 5, 1994.

Secretary (Office Automation) to the Assistant Director, Strategic and Eurasian Affairs Bureau. Effective October 5, 1994.

United States Information Agency

Supervisory Public Affairs Specialist (New York, N.Y.) to the Associate Director Bureau of Information, Foreign Press Center. Effective October 19, 1994.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954 — 1958 Comp., P. 218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–30012 Filed 12–6–94; 8:45 am]

BILLING CODE 6325–01–M

National Partnership Council; Meetings

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Office of Personnel Management (OPM) announces the next meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet December 14, 1994, at 1 p.m., in the OPM Conference Center, Room 1350, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor.

TYPE OF MEETING: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM to obtain appropriate accommodations.

POINT OF CONTACT: Douglas K. Walker, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5315, Washington, DC 20415–0001, (202) 606–1000.

SUPPLEMENTARY INFORMATION: The Council will receive reports on and discuss activities contained in its work plan for calendar year 1994, *Strategy To Promote Change*, which was adopted at the April 12, 1994, meeting, and will discuss its work plan for calendar year 1995.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Douglas K. Walker at the address shown above. Comments should be received by December 9, in order to be considered at the December 14, meeting.

Office of Personnel Management.
James B. King,
Director.
[FR Doc. 94–30013 Filed 12–6–94; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–20750; 812–9258]

The Evergreen Fund, et al.; Notice of Application

December 1, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Evergreen Fund, The Evergreen Total Return Fund, The Evergreen Limited Market Fund, Inc., The Evergreen Growth and Income Fund, The Evergreen Money Market Trust, The Evergreen American Retirement Trust, The Evergreen Municipal Trust, The Evergreen Real Estate Equity Trust, The Evergreen Fixed Income Trust, The Evergreen Foundation Trust (the "Evergreen Funds"), and Evergreen Asset Management Corp. (the "Adviser").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act to grant an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit the Evergreen Funds to issue multiple classes of shares representing interests in the same portfolio of securities, and to assess and, under certain circumstances, waive or reduce a contingent deferred sales charge ("CDSC") upon certain redemptions of shares.

FILING DATES: The application was filed on September 28, 1994 and amended on November 1, 1994 and November 23, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 23, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: 2500 Westchester Avenue, Purchase, New York 10577.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Law Clerk, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Evergreen Fund, The Evergreen Total Return Fund, The Evergreen Growth and Income Fund, The Evergreen Money Market Trust, The Evergreen American Retirement Trust, The Evergreen Municipal Trust, The Evergreen Real Estate Equity Trust, The Evergreen Fixed Income Trust, and The Evergreen Foundation Trust are Massachusetts business trusts and are registered open-end management investment companies. The Evergreen Limited Market Fund, Inc. is a Maryland corporation and is a registered open-end management investment company. The Evergreen American Retirement Trust, The Evergreen Municipal Trust, The Evergreen Real Estate Equity Trust, The Evergreen Fixed Income Trust, and The Evergreen Foundation Trust (collectively, the "Trusts") currently offer their shares in separate series.

2. The Adviser serves as investment adviser to the Evergreen Funds and is a wholly-owned subsidiary of First Union National Bank of North Carolina. The distributor of the Funds is Evergreen Funds Distributor, Inc., a subsidiary of Furman Selz Incorporated. Applicants request relief on behalf of applicants and any existing[1] or future registered open-end management investment company or series thereof representing a separate investment portfolio for which the Adviser, or an entity controlled by or under common control with the Adviser, serves now or in the future as investment adviser (collectively, the "Funds").

3. The Funds currently offer one class of shares (the "Existing Class"). The Existing Class is not subject to any sales or redemption charges and is not subject to any charges pursuant to a plan adopted in accordance with rule 12b–1 under the Act. Shares of the Existing Class have been primarily sold to individuals and institutional investors through referrals and general media advertisements. Applicants currently propose to establish a multiple class distribution system that would authorize each Fund to sell four classes of its shares, Class Y, Class A, Class B, and Class C. Applicants also propose that the Funds be able to create additional classes of shares in the future.

4. Applicants propose that the current shares of each Existing Class be redesignated as Class Y shares. Class Y shares will not be subject to any sales charges or fees pursuant to a rule 12b–1 distribution plan or shareholder services plan. Class Y shares will be sold solely to (a) all shareholders of record in one or more of the Evergreen Funds prior to the commencement of the multi-class distribution, (b) institutional investors, and (c) investment advisory clients of the Adviser or affiliates of the Adviser.

5. Class A, Class B, and Class C shares will be offered primarily to individual investors. Class A shares will be offered with a front-end sales load and will be subject to a distribution fee under a rule 12b–1 distribution plan. Class B shares will be offered without a front-end sales load, but will be subject to a CDSC and distribution fees under a rule 12b–1 distribution plan. After a specified period, Class B shares will convert to Class A shares. Class C shares will be offered without a front-end sales load and also will be subject to a CDSC and distribution fees under a rule 12b–1 distribution plan. The Class C CDSC will only apply for the first year after purchase and Class C shares will have no conversion privileges.

6. Each Fund may also enter into servicing agreements ("Shareholder Servicing Agreements") with broker-dealers, banks, and financial institutions with respect to each newly created class of shares to provide various shareholder record keeping, administrative, personal, and support services to their customers. While it is currently anticipated that payments made under Shareholder Servicing Agreements will be pursuant to a rule 12b–1 plan, a Fund may in the future make such payments pursuant to a non-rule 12b–1

[1] The Evergreen Funds are the only investment companies existing on the date of this application which currently intend to rely on the requested order. First Union National Bank of North Carolina, the Adviser's parent, acts as investment adviser to First Union Funds. While First Union Funds do not currently intend to rely on the order requested in this application, they may do so in the future, subject to the representations and conditions in the application.

shareholder servicing plan in the event such a plan is duly adopted by the Fund in accordance with condition 5 of this application. The services provided under a Shareholder Servicing Agreement will augment (and not be duplicative of) the services provided by the Adviser or the Fund's custodian.

7. Each class of shares would be identical in all respects, except for: (a) The impact of expenses described in condition 1 below that are attributable only to certain classes ("Class Expenses"); (b) the fact that the classes will vote separately with respect to a Fund's rule 12b–1 distribution plan, and if applicable, any shareholder servicing plan; (c) the different exchange privileges of each class of shares; (d) any conversion feature applicable to a class of shares; and (e) different class designations.

8. All classes of shares of a Fund will bear Fund or Trust expenses on the basis of the relative net asset value of the classes. Expenses specific to a class will be allocated to that class. A Fund's investment adviser may choose to reimburse or waive Class Expenses of certain classes on a voluntary, temporary basis. The amount of Class Expenses waived or reimbursed by the Adviser may vary from class to class. Class Expenses are by their nature specific to a given class and obviously expected to vary from one class to another. Applicants thus believe that it is acceptable and consistent with shareholder expectations to reimburse or waive Class Expenses at different levels for different classes of the same Fund.

9. In addition, the Adviser may voluntarily waive or reimburse Trust expenses and/or Fund expenses (with or without a waiver or reimbursement of Class Expenses) but only if the same proportionate amount of Trust expenses and/or Fund expenses are waived or reimbursed for each class. Thus, any Trust expenses that are waived or reimbursed would be credited to each class of a Fund based on the relative net assets of the classes. Similarly, any Fund expenses that are waived or reimbursed would be credited to each class of that Fund according to the relative net assets of the classes. Trust expenses and Fund expenses apply equally to all classes of a given Fund. Accordingly, it may not be appropriate to waive or reimburse Trust expenses or Fund expenses at different levels for different classes of the same Fund.

10. Because Class Expenses and payments made under a rule 12b–1 distribution plan or non-rule 12b–1 shareholder services plan may differ for each class, the per share net income of, and dividends on, each class may differ from the net income of, and dividends on, the other classes of shares of a Fund. In addition, except for Funds that seek to maintain a stable net asset value and declare dividends daily, the net asset value attributable to each class of shares of a Fund may differ.

11. Shares of a class of one Fund will be exchangeable for shares of the same class of another Fund. Any exchanges will comply with the provisions of rule 11a–3 under the Act.

12. Shares of certain classes, including Class B and Class C, may be subject to the imposition of a CDSC if they are redeemed within a prescribed time after their purchase (the "CDSC Period"). The amount of the CDSC will be calculated as a specified percentage of the lesser of the net asset value at the time of purchase or at the time of redemption.

13. No CDSC will be imposed on amounts representing increases in the value of shares due to capital appreciation, redemptions of shares acquired through reinvestment of dividends or capital gain distributions, or redemptions of shares held by longer than the CDSC Period. In determining whether the CDSC is payable, it will be assumed that shares not subject to the CDSC are redeemed first and that other shares are then redeemed in the order purchased. This will result in a charge, if any, being imposed at the lowest possible rate.

14. If a shareholder pays a CDSC upon redemption and a reinvestment occurs within a specified time period stated in the prospectus in effect at the time the shares are sold, the shareholder may receive a credit, paid by the distributor, for any CDSC paid.

15. Applicants request the ability to waive or reduce the CDSC on certain redemptions. Any waiver of the CDSC will comply with the requirements set forth in subparagraphs (a) through (d) of rule 22d–1 under the Act.

16. Shares of some classes subject to a CDSC ("Convertible CDSC Shares") retained by an investor past a prescribed period following the purchase of Convertible CDSC Shares will convert into shares of other classes not subject to a CDSC ("Non-CDSC Shares"). Shares acquired through the reinvestment of dividends and other distributions paid with respect to Convertible CDSC Shares also will be Convertible CDSC shares, but will convert to Non-CDSC Shares on the earlier of a prescribed period following the date of such reinvestment or the conversion date of the most recently purchased Convertible CDSC Shares not acquired through the reinvestment of dividends or other distributions.

17. The sum of any front-end sales charge, asset-based sales charge, and CDSC will not exceed the maximum sales charge as provided in Article III, Section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers Inc. ("NASD").

Applicant's Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of shares might be deemed to result in the issuance of a "senior security" within the meaning of sections 18(g) of the Act and therefore might be deemed to be prohibited by section 18(f)(1) and to violate the equal voting provisions of section 18(i) of the Act. Applicants believe that the proposed allocation of expenses and the voting rights in the manner described above is equitable and would not discriminate against any group of shareholders.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder, to assess and, under certain circumstances, waive or reduce a CDSC with respect to certain redemptions of shares. Applicants believe that this request would allow shareholders the option of having more investment dollars working for them from the time of their share purchases than if they invested in a class with a front-end sales load.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and will be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund will relate solely to: (a) The impact of the Class Expenses specifically attributable to the particular class which will be limited to: fees payable pursuant to a rule 12b–1 distribution plan and/or shareholder servicing plan, if applicable; transfer agent fees as identified by the transfer agent as being attributable to a specific class; fees and expenses of a Fund's administrator that are identified and approved by the trustees or directors as being attributable to a specific class of shares; printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and

proxies to current shareholders; 'blue sky" registration fees incurred by a class of shares; SEC registration fees incurred with respect to a class; the expense of administrative personnel and services as required to support the shareholders of a specific class; litigation or other legal or audit expenses relating solely to one class of shares; trustees' or directors' fees incurred as a result of issues relating to one class of shares; and any other incremental expenses subsequently identified that should be properly allocated to one class and which are approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to a Fund's distribution plan and/or shareholder servicing plan, if applicable, except as provided in condition 17 below; (c) the different exchange privileges of each class of shares; (d) the conversion feature applicable only to Class B shares; and (e) the different class designation of each class of shares.

2. The trustees or directors of a Fund, including a majority of the disinterested trustees or directors, will approve the multi-class distribution system. The minutes of the meetings of the trustees or directors of a Fund regarding their deliberations with respect to the approvals necessary to implement the multi-class distribution system will reflect in detail the reasons for their determination that the proposed multi-class distribution system is in the best interests of both a Fund and its shareholders.

3. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the trustees or directors of each Fund, including a majority of the trustees or directors who are not interested persons of a Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet class expenses shall provide to the board of trustees or directors, and the trustees or directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees or directors of a Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the classes of shares. The trustees or directors, including a majority of the disinterested trustees or directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The adviser or distributor will be responsible for reporting any potential or existing conflicts to the trustees or directors. If a conflict arises, the adviser or distributor at its own cost will remedy such conflict by taking such steps as are necessary, up to an including establishing a new registered management investment company.

5. Any shareholder services plan that may in the future be adopted with respect to a Fund will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1.

6. The trustees or directors of a Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees or directors to justify any distribution or servicing fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the disinterested trustees or directors in the exercise of their fiduciary duties.

7. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that distribution and/or shareholder service payments relating to each respective class of shares will be borne exclusively by that class and any incremental transfer agency costs and other Class Expenses relating to a specific class of shares will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value, dividends, and distributions of the various classes and the proper allocation of expenses between the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation," as defined and described in Statement of Auditing Standards ("SAS") No. 70 of the American Institute of Certified Public Accountants ("AICPA"), and the ongoing reports will each be a "report on policies and procedures placed in operation and tests of operating effectiveness," as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar accounting standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value, dividends, and distributions of the classes of shares and the proper allocation of expenses between the classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition 8 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

10. The prospectus will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares in a Fund may receive different compensation with respect to one particular class of shares over another in the same Fund.

11. Applicants will cause the distributor, and any successor to the

distributor, to adopt compliance standards which govern the circumstances under which each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of a Fund to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees or directors of each Fund with respect to the multi-class distribution system will be set forth in guidelines which will be furnished to the trustees or directors.

13. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to each Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of shares separately.

14. The applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to its rule 12b–1 distribution plan or any shareholder services plan a Fund may adopt in the future in reliance on the exemptive order.

15. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

16. Any class of shares with a conversion feature ("Purchase Class") will convert into another class of shares ("Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

17. If a Fund implements any amendment to its rule 12b–1 distribution plans (or adopts or implements any amendment to a non-rule 12b–1 shareholder services plan) that would increase materially the amount of asset-based charges that may be borne by Target Class shares for distribution or shareholder services, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The directors or trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the directors or trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. New Target Class or New Purchase Class shares (as well as other future classes formed for other purposes) may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the directors or trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shares shall be borne solely by the adviser or distributor. Purchase Class shares sold after the implementation of the proposal providing for the payment of higher distribution and shareholder servicing fees with respect to Target Class shares may convert to Target Class shares subject to the higher maximum payment, provided that the material features of the proposal and the level of the higher distribution and shareholder servicing fees under the amended Target Class Plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30058 Filed 12–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20747; No. 811–3777]

Home Life Bond Fund, Inc.

November 30, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Home Life Bond Fund, Inc. ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on August 23, 1994, and amended on November 18, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Applicant will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 1994, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, Home Life Bond Fund, Inc., 75 Wall Street, New York, New York 1005, and c/o Patricia O. McLaughlin, Phoenix Home Life Mutual Insurance Company, One American Row, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, on (202) 942–0670, Office of Insurance

Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant was organized as a corporation under Maryland law on April 21, 1983 and dissolved as such on April 7, 1993.

2. On June 14, 1983, Applicant filed a registration statement under Section 8(b) of the 1940 Act and, on February 21, 1984, registered under the 1940 Act as an open-end, diversified investment management company. Also on June 14, 1983, Applicant filed a registration statement under the Securities Act of 1933, registering an indefinite number of shares of Common Stock, $.01 par value. This registration statement was declared effective on February 21, 1984. The initial public offering commenced February 21, 1984.

3. Applicant's only security holder was Phoenix Home Life Separate Account B ("Account B"). On August 5, 1992, Applicant's Board of Directors unanimously approved the transfer of Applicant's assets and liabilities to Separate Account P ("Account P") of Phoenix Home Life Mutual Insurance Company ("Phoenix-Home Life"). Account B and its depositor, Phoenix-Home Life, voted all outstanding shares in favor of the reorganization, constituting more than two-thirds of the shares outstanding that was required under Maryland law.

4. As of October 23, 1992, Applicant has one class of Common Stock outstanding, consisting of 1,239,689.6517 outstanding shares. The aggregate net asset value of such shares and the net asset value per share were $13,615,073.83 and $10,9856, respectively.

5. On October 26, 1992, Applicant's assets, consisting only of qualified plan assets, were transferred to Account P, which contains only qualified plan assets. Account B became a contractholder of Account P. Account B and Account P were not required to be registered under the 1940 Act in reliance on Section 3(c)(11) thereunder. In consideration for the transfer, Account P assumed all of Applicant's liabilities and delivered to Applicant full and fractional units of Account P equal to that number of full and fractional units of Account P as determined based on the relative net asset values of Applicant and Account P as of the close of the New York Stock Exchange on October 23, 1992 (the last business day preceding the reorganization). Applicant distributed Account P units pro rata to Account B and simultaneously Applicant's shares held by Account B were cancelled. No brokerage commissions were paid in connection with the transfer of assets.

6. No assets were retained by Applicant after October 26, 1992, and no debts or other liabilities of Applicant remain outstanding. Applicant has no security holders to whom distributions in complete liquidation have not been made. Applicant is not a party to any litigation or administrative proceeding.

7. Phoenix-Home Life, the parent company to the Adviser and depositor of Account B and Account P, paid all of the direct and indirect expenses of the reorganization, including any brokerage fees relating to transactions resulting from the reorganization.

8. Other than as described above, during the past 18 months, Applicant has not, for any reason, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant.

9. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant has made all filings under the 1940 Act, including Form N–SAR filings, for each period for which such filings were required.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30032 Filed 12–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20748; No. 811–2172]

Home Life Equity Fund, Inc.

November 30, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Home Life Equity Fund, Inc. ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on August 23, 1994 and amended on November 18, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and Serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 1994, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, Home Life Equity Fund, Inc., 75 Wall Street, New York, New York 10005; and c/o Patricia O. McLaughlin, Phoenix Home Life Mutual Insurance Company, One American Row, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, on (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant was organized as a corporation under Maryland law on June 3, 1970, and dissolved as such on April 7, 1993.

2. On February 26, 1971, Applicant filed a registration statement under Section 8(b) of the 1940 Act and, on February 26, 1971, registered under the 1940 Act as an open-end, diversified investment management company. Also on February 26, 1971, Applicant filed a registration statement under the Securities Act of 1933, registering 1,000,000 shares of Common Stock, $10,00 par value. This registration statement was declared effective on September 14, 1971 as of June 19, 1971. The initial public offering commenced September 14, 1971.

3. On May 20, 1992, Applicant's Board of Directors unanimously approved the terms of an Agreement and Plan of Reorganization and Liquidation ("Plan") and recommended it for shareholder approval. On September 21, 1992, at a Special Meeting of Shareholders, 546,533.8323 shares out of the 690,437.4839 shares

outstanding on the record date of August 4, 1992 (constituting more than the two-thirds of the shares outstanding that was required under Maryland law to approve the Plan), voted in favor of the Plan.

4. As of October 22, 1992, Applicant had one class of Common Stock outstanding, constituting 3,916,201.91 outstanding shares. The aggregate net asset value and net asset value per share were $49,323,348.86 and $12.5949, respectively. Applicant's only security holders were Phoenix Home Life Mutual insurance Company's ("Phoenix-Home Life") Separate Account B, Separate Account C, and Separate Account D (collectively, "Separate Accounts").

5. On October 21, 1992, the Commission issued an order granting an application for exemptive relief from Section 17(a) and permitting the transfer of Applicant's assets to The Phoenix Edge Series Fund Growth Series, a Massachusetts business trust organized on February 18, 1986 ("Growth Series").

6. On October 26, 1992, under the terms of the Plan, Applicant transferred its assets on the Growth Series. Under the Plan, Applicant's security holders, the Separate Accounts, become Growth Series security holders. In consideration for the transfer, the Growth Series assumed all of applicant's obligations and liabilities to the extent they existed on or after the effective date of the reorganization and delivered to Applicant full and fractional shares of the Growth Series, par value $1.00 per share, equal to that number of Growth Series share determined by multiplying the outstanding number of Applicant's shares by the exchange ratio. The exchange ration was the number determined by dividing the net asset value per share of Applicant's shares by the net asset value per share of the Growth Series shares, such values determined as of the close of the New York Stock Exchange on October 22, 1992 (the last business day preceding the reorganization). Applicant distributed such Grow Series shares pro rata to its security holders and simultaneously Applicant's shares held by its security holders were cancelled. No brokerage commissions were paid in connection with the transfer of assets.

7. Applicant has retained no assets after October 26, 1992, and has no security holders. Applicant does not have any debts or other liabilities which remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

8. Phoenix-Home Life, the parent company to the Adviser, paid all of the direct and indirect expenses of the reorganization, including any brokerage fees relating to transactions resulting from the reorganization.

9. Other than as described above, during the past 18 months, Applicant has not, for any reason, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant.

10. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

11. Applicant has made all filings under the 1940 Act, including Form N-SAR filings, for each period for which such filings were required.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-30033 Filed 12-6-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20749; No. 811-3768]

Home Life Liquid Fund, Inc.

November 30, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Home Life Liquid Fund, Inc. ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on August 23, 1994, and amended on November 18, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 1994, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, Home Life Liquid Fund, Inc., 75 Wall Street, New York, New York 10005; and c/o Patricia O. McLaughlin, Phoenix Home Life Mutual Insurance Company, One American Row, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, on (202) 942-0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations:

1. The Applicant was organized as a corporation under Maryland law on April 22, 1983 and dissolved as such on April 7, 1993.

2. On June 14, 1983, Applicant filed a registration statement under Section 8(b) of the 1940 Act and, on February 21, 1984, registered under the 1940 Act as an open-end, diversified investment management company. Also on June 14, 1983, Applicant filed a registration statement under the Securities Act of 1933, registering an indefinite number of shares of Common Stock, $.001 par value. This registration statement was declared effective on February 21, 1984. The initial public offering commenced February 21, 1984.

3. Applicant's only security holder was Phoenix Home Life Separate Account B ("Account B"). On August 5, 1992, (Applicant's Board of Directors unanimously approved the transfer of (Applicant's assets and liabilities to Separate Account G ("Account G") of Phoenix Home Life Mutual Insurance Company ("Phoenix-Home Life") in a tax free reorganization. Account B and its depositor, Phoenix-Home Life, voted all outstanding shares in favor of the reorganization, constituting more than two-thirds of the shares outstanding that was required under Maryland law.

4. As of October 23, 1992, the last business day preceding the reorganization, (Applicant had one class of Common Stock outstanding, consisting of 19,955,856.27 shares. The aggregate net asset value of such shares and the net asset value per share were $19,955,856.42 and $1.00, respectively.

5. On October 26, 1992, Applicant's assets, consisting only of qualified plan assets, were transferred to Account G, which contains only qualified plan assets. Account B became a contractholder of Account G. Account B

and Account G were not required to be registered under the 1940 Act in reliance on Section 3(c)(11) thereunder. In consideration for the transfer, Account G assumed all of Applicant's liabilities and delivered to Applicant full and fractional units of Account G equal to that number of full and fractional units of Account B as determined based on the relative net asset values of Applicant and Account G as of the close of the New York Stock Exchange on October 23, 1992 (the last business day preceding the reorganization). Applicant distributed Account G units pro rata to Account B and simultaneously Applicant's shares held by Account B were cancelled. No brokerage commissions were paid in connection with the transfer of assets.

6. No assets were retained by Applicant after October 26, 1992, and no debts or other liabilities of Applicant remain outstanding. Applicant has no security holders to whom distributions in complete liquidation have not been made. Applicant is not a party to any litigation or administrative proceeding.

7. Phoenix-Home Life, the parent company to the adviser and depositor of Accounts B and G, paid all of the direct and indirect expenses of the reorganization, including any brokerage fees relating to transactions resulting from the reorganization.

8. Other than as described above, during the past 18 months, Applicant has not, for any reason, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant.

9. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant has made all filings under the 1940 Act, including Form N-SAR filings, for each period for which such filings were required.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-30034 Filed 12-6-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35030; File No. SR-CHX-93-19]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Creating the Chicago Match System

November 30, 1994.

I. Introduction

On August 6, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to establish rules for an institutional trading system, the Chicago Match,[3] that integrates an electronic order match system with a facility for brokering trades.

On August 19, 1993, the CHX submitted to the Commission Amendment No. 1 to the proposed rule change.[4] On April 4, 1994, the CHX submitted to the Commission Amendment No. 2 to the proposed rule change.[5] On June 7, 1994, the CHX submitted to the Commission Amendment No. 3 to the proposed rule change.[6] On July 11, 1994, the CHX submitted to the Commission Amendment No. 4 to the proposed rule change.[7] The Commission published all of these amendments for comment on August 5, 1994.[8] On July 27, 1994, the CHX submitted to the Commission amendment No. 5 to the proposed rule change.[9] By letter dated September 15, 1994, the CHX submitted Amendment No. 6 to the proposed rule change, which addressed trading halts.[10] Finally, on September 20, 1994, the CHX submitted to the Commission amendment No. 7 to the proposed rule change to clarify the language concerning the priority of the CHX quote in the Chicago Match.[11] These amendments made a variety of non-substantive, clarifying changes to the proposal and are incorporated into the discussion below.

The Commission received two comment letters from the New York Stock Exchange ("NYSE") on this proposal[12] and two letters from the CHX supporting its proposal and addressing the NYSE's comments.[13] This order approves the proposed rule change, including all the amendments.

II. Overview of Proposal

A. General Description

Chicago Match is an electronic order matching system that will cross orders entered by users during regular trading hours for securities that are listed on the CHX or for which the CHX has unlisted trading privileges. The match will occur once a day at mid-day. Users may be CHX members or non-members, and will likely include institutional customers, broker-dealers, and Chicago Match market makers. Users will be able to enter orders directly into Chicago Match through personal computers and modems. A CHX member must be responsible for controlling and clearing the orders entered by non-members.[14]

The Chicago Match will electronically match users' orders in an allocation procedure described below. If an electronic match occurs, the trade will be priced at the market price[15] at a random time within a pre-determined ten minute period and will be executed at that time. If a match does not occur, users will still have the opportunity to find the other side of their orders through participating brokers.[16]

The Chicago Match will primarily operate off the Exchange floor, but CHX

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] Among other things, Amendment No. 1 changed the name of this proposed system from "Match Market Exchange" to "Chicago Match." *See* letter from David T. Rusoff, Attorney, Foley & Lardner, to Cheryl Dunfee, Attorney, SEC, dated August 18, 1993.

[4] *See* note 3 *supra*.

[5] *See* letter from David T. Rusoff, Attorney, Foley & Lardner, to Sandra Sciole, Special Counsel, SEC, dated March 29, 1994.

[6] *See* Letter from David T. Rusoff, Attorney, Foley & Lardner to Sharon M. Lawson, Assistant Director, SEC, dated June 7, 1994.

[7] *See* Amendment No. 4 to SR-CHX-93-19, dated July 7, 1994.

[8] *See* Securities Exchange Act Release No. 34469 (August 1, 1994), 59 FR 40073.

[9] *See* Amendment No. 5 to SR-CHX-93-19, dated July 27, 1994. Amendment No. 5 contained a restatement of the Chicago Match rules and, in addition, a non-substantive amendment.

[10] *See* letter from George T. Simon, Foley & Lardner, to Sharon Lawson, Assistant Director, SEC, dated September 15, 1994.

[11] *See* letter from George T. Simon, Foley & Lardner, to Sharon Lawson, Assistant Director, SEC, dated September 20, 1994.

[12] *See* letters from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated May 2, 1994 and August 15, 1994.

[13] *See* letter from George T. Simon, Foley & Lardner, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1994, and letter from George T. Simon, Foley & Lardner, to Sharon Lawson, Assistant Director, SEC, dated July 25, 1994.

[14] When a non-member is given access to the Chicago Match it must enter into several agreements to ensure that a member has responsibility and control over the non-member's activities. In addition, non-member users of the Chicago Match will be required to have $10 million for investment purposes. *See* discussion *infra*.

[15] The market price is equal to the mid-point between the Consolidated Best Bid and Offer.

[16] Users may take advantage of the "near match" function discussed *infra*.

market makers may enter guarantees through their regular terminals on the Exchange floor. Other users will be able to place buy and sell orders directly and anonymously into the electronic system through off-floor terminals. Quotations from the CHX trading floor will automatically be fed into the Chicago Match on a real time basis.[17] The system will not otherwise directly interact with the Exchange's regular auction process.

All Chicago Match users will enter into a user agreement[18] with the Exchange to be bound by the Exchange's rules governing the Chicago Match. Prior to the time a non-member user enters an order into the system, it will be required to submit to the Exchange the name of the Midwest Clearing Corporation ("MCC") member through which the user will clear its trades and provide the Exchange with a copy of a "Give-Up Agreement" with such member. CHX clearing members will clear Chicago Match transactions through their existing clearing arrangements.[19]

Prior to the cross, users will enter the following information for each order:[20]

- stock ticker symbol;
- number of shares to be bought or sold;
- capacity (buy, sell or sell short);
- limit price (optional);
- minimum trade size (optional);
- excluded category of contra parties;
- names of individual excluded users (optional);[21]
- liquidity fee or credit (optional);
- linked order conditions (optional);
- near match range and near match broker (optional);
- order visibility; and
- clearing firm.

At any time up until the cross, users can review, edit or cancel their orders.

B. Market Maker Guarantees

In addition to orders entered by users, Chicago Match will include guarantees by Chicago Match market makers. Theses market makers will be Exchange members who register with the Exchange to be Chicago Match market makers. As such, they will be obligated to guarantee a minimum execution size to all users of the system. The minimum size of the guarantee will be ten thousand shares for the two hundred securities listed or admitted to unlisted trading privileges on the Exchange with the highest consolidated trading volume, five thousand shares for the one hundred securities with the next highest trading volume and two thousand shares for all other securities.[22] Market maker guarantees automatically will be entered into the Chicago Match at the start of the time for order entry.

C. Priority and Liquidity Fees and Credits

Chicago Match permits the use of liquidity fees and liquidity credits to determine the level of priority for order matching. In the Chicago Match, the size of the liquidity fee or liquidity credit determines the level of priority for order matching. Those users that are willing to pay the highest liquidity fee will have the highest execution priority (except for orders that are a part of the CHX quote, which have the highest priority of all orders). Those users desiring to be paid for providing liquidity will have the lowest priority. Liquidity fees and credits will only be paid when an order with a liquidity fee is matched with an order with a liquidity credit. When a match occurs, a liquidity fee that is equal to the size of the liquidity credit will be paid. In all other cases, no liquidity fees will be paid. Users enter liquidity fees and credits when they enter orders. The Chicago Match will include a default liquidity fee or credit to be associated with a specific Chicago Match guarantee by a CHX market maker.[23] Chicago Match market makers can improve this liquidity fee or credit and increase the size of their guarantee before the cross takes place.

The Chicago Match will limit the size of liquidity fees and liquidity credits entered by users. If a liquidity fee is greater than ½ of the spread of the Consolidated Best Bid and Offer for the particular security at cross time it will be reduced to ½ of the spread at cross time. For example, if ½ of the spread is 6¼ cents, and an order with a liquidity fee of 10 cents is entered, the maximum liquidity fee that order can pay will be 6¼ cents. Liquidity credits, however, will be treated differently than liquidity fees. The Chicago Match will not permit liquidity credits to be entered in an amount greater than ½ of the spread of the Consolidated Best Bid and Offer. For example, if the spread of the Consolidated Best Bid and Offer at cross time was ½ (50 cents), the maximum liquidity credit allowed would be 25 cents. If an order was entered with a liquidity credit greater than 25 cents, the user would have the option of either having the liquidity credit reduced to half of the spread or having the order excluded from the match.

D. Order Execution

The CHX's publicly disseminated bid or offer will be entered into Chicago Match as an order.[24] Once entered, these orders will have the highest priority for execution.[25]

All matched orders will be executed at a random time within a predetermined ten minute window period at the market price at such time. The Chicago Match will calculate the market price as the mid-point between the Consolidated Best Bid and Offer regardless of the size of the spread. For example, if the Consolidated Best Bid and Best Offer of stock X was 20–20⅛, the cross price would be 20$^{1}/_{16}$.

Limited price orders, orders with a liquidity fee or credit entered in cents, and orders that are entered with a liquidity fee or credit relative to the Consolidated Best Bid or Offer or as a computed quantity (in addition to liquidity fees or credits entered in cents) will be eligible to be displayed over the system. The Exchange will assign numeric values to these orders based on the then current Consolidated Best Bid and Offer. The Exchange anticipates that initially it will update displayed information at least every fifteen minutes.[26]

Chicago Match users also may enter linked orders, which are defined as

[17] Quotations will be updated until the time of the match.

[18] The user agreement will provide, *inter alia*, that the user has entered into a "Give-Up Agreement" with a CHX clearing member or already clears through the Midwest Clearing Corp.; that the CHX clearing member agrees to be jointly or severally liable for all actions of the user; that the user agrees to be bound by the policies of the Board of Governors of the Exchange that are applicable to Chicago Match; and that the Exchange reserves the right to terminate the user's access to the Chicago Match.

[19] The clearing agreements set the user's daily credit limits.

[20] Users will be able to enter orders from the time the Exchange opens for trading until the match time.

[21] An excluded user is defined under CHX Rule 2(l) as a user whose order cannot be matched with another user because the match might result in a prohibited transaction as that term is defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001—1461 (1988). This function will not be available immediately.

[22] *See* proposed CHX Article XXXVII, Rule 2(g).

[23] The term "default liquidity fee or credit" refers to the liquidity fee or liquidity credit associated with buy and sell orders in each security in which a Chicago Match market maker is registered, which are automatically entered into the Chicago Match. The size of each such Chicago Match Market Maker Order shall be equal to the Default Size, which is the minimum guarantee the market maker must provide. (*See* proposed Article XXXVII, Rules 2(g) and 6(C).)

[24] Quotations will be updated until the time of the order matching.

[25] These orders will be entered with a liquidity credit equal to ½ of the spread of the consolidated best bid and offer. These orders will be entitled to full execution ahead of the other orders within the group that have the same liquidity credit.

[26] In particular, the numerical values of orders entered relative to the Consolidated Bid and Offer will need to be updated as the market price changes prior to the match.

orders whose execution are conditioned on the execution (or non-execution) of one or more orders. For example, a user may only want to sell stock X if he can buy stock Z. A user would than link his sell order of stock X to his buy order of stock Z. When the match occurs, the user's order to sell stock X will only be executed if the user's order to buy stock Z is also executed. Otherwise, both orders will remain unmatched. The Exchange believes that permitting the linking of orders, and permitting orders that specify a limit price, will give money managers greater cash management capabilities. The CHX states that this flexibility will increase the effective match rate of the system relative to that of other crossing systems.

Immediately prior to the match, all orders for a particular security first will be sorted into groups and then each group will be prioritized for execution. Except for orders that are part of CHX's quote, which will receive the highest priority for execution, a group will consist of either all buy orders or all sell orders in a security that have the same liquidity fee or credit. Groups will be prioritized by liquidity fee or credit. Groups will be matched starting with the group of buy orders with the highest priority. This group will be matched with the group of sell orders with the highest priority. If the aggregate size of all orders in both groups is the same, all orders in both groups will be matched. If the aggregate size of all orders in both groups is not the same, orders in the group with the smaller aggregate size will be allocated among orders in the group with the larger size on a pro-rata basis, except that orders that are represented as part of the CHX quote will be entitled to complete execution before the remaining orders are allocated on a pro rata basis. If this results in any order receiving an odd lot or a mixed lot (*e.g.*, 265 shares), the amount of shares that order receives shall be rounded down to the nearest round lot (*e.g.*, 200 shares). All the odd lots for a particular group shall be aggregated and then allocated to the largest order in the group. If, after matching orders in a buy group with orders in a sell group, unmatched orders remain in the group of buy orders, Chicago Match will continue to process of matching this group with successively lower priority groups of sell orders until all of the orders in the group of buy orders are either matched or are unable to be matched.

After completion of the match described above, Chicago Match will continue to process of matching groups and orders within those groups, in accordance with the rules described above, starting with successively lower priority buy order groups until no more matches can be made. Once all of the matches are made, Chicago Match will determine whether any matched orders are conditional orders and if so, whether their conditions are fully satisfied.

A user may enter conditional orders specified in proposed Rule 6(e) of Article XXXVII of the CHX Rules.[27] The possible conditions include, *inter alia*, a limit price, linked order condition, minimum size, and/or names of excluded users.[28] In the event that certain conditions are not fully satisfied, Chicago Match will remove that order (and any other orders whose conditions are not fully satisfied). Chicago Match will then erase the match for all orders in that security and will restart the matching process excluding all conditional orders whose conditions are not fully satisfied in the last matching process.

E. Near Match Procedures and Floor Broker Participation

The Chicago Match will allow users to send orders that are not executed in the match to a broker in the event of a "near match." A "near match" occurs when a buyer and seller in the system did not match merely because their required liquidity fees and credits differed.[29] In the event of a "near match," the user will receive an administrative message over the system asking whether the user wants a predetermined broker to negotiate a trade with another user that has entered similar "near match" parameters. If both parties of the near match wish to negotiate, then the broker (or brokers) will receive a negotiate message.[30] Users enter their specific "near match" parameters when they sign on to the system.

In addition, the Chicago Match provides another function similar to the "near match" function. The system allows floor brokers to enter a message that, after the daily match, will tell the users of unexecuted orders in a particular stock of an indication of continuing interest in buying or selling that stock.[31] A user would then be free to contact the floor broker to negotiate a trade. Users will have the ability to prevent indications from appearing on their screens.[32]

F. Fees

Users other than Chicago Match market makers will have the option of having their orders displayed to other users of the system. If a non-market maker user elects to have its order displayed, the order will be displayed under certain circumstances.[33] Orders entered by Chicago Match market makers and orders that are part of CHX's quote will not be charged a transaction fee. Users who display orders will be charged ½ cent per share, and all other users will pay 2 cents per share. The Exchange fee is separate from any liquidity fees and credits.

Chicago Match market makers will be paid ⅛ of a cent per share, per order, when they do not participate in a cross in their issue so long as the liquidity parameter entered by the Chicago Match market maker is within a pre-determined range.[34] This ⅛ of a cent per share fee will be paid by the Exchange out of the ½ cent or 2 cent user fee it will receive from users of the Chicago Match. The Exchange believes that this will provide the Chicago Match

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[27] The Chicago Match rules provide that conditional orders can be displayed orders. There will not be any notation on the displayed order screen to indicate which, if any, displayed order is also a conditional order.

[28] Pursuant to proposed Rule 6(e)(8) of Article XXXVIII of the CHX Rules a user may enter the name of an "excluded user" only if a match with such user could result in a "prohibited transaction" as that term is defined in ERISA. The Exchange states that proposed CHX Rule 6(e)(7) of Article XXXVII also permits a user to exclude an entire category of contra parties such as market makers or specialists.

[29] The term "near match" refers to two orders for a particular security in which the number of shares of each order equals or exceeds the minimum size specified by the other order and the liquidity credit required by one side is greater than the liquidity fee offered by the other side. Each user will set its own "near match" parameters when it signs on to the system. An individual user's "near match" parameters allow users to decide under what circumstances it should be contacted by a broker to negotiate a trade which did not match because of varying liquidity fees and credits.

[30] The Exchange states that because the broker or brokers do not learn anything about the order unless both parties to the near match have given their approval, the users of the Chicago Match retain complete control during this process.

[31] "Indications of interest" would be entered by floor brokers before the cross. The floor broker's "indication" would not constitute an order entered into Chicago Match but it would merely indicate that a particular broker may be interested in negotiating a trade in a particular security.

[32] If the user does not screen out "indications of interest," they would be made known to those users whose orders were not executed during the matching process.

[33] *See* proposed Rule 8(b) of Article XXXVI dealing with display-eligible orders. Non-Display eligible orders are charged transaction fees four times the fee charged display eligible orders. *See* discussion *infra*.

[34] This range will be determined by the CHX. The Chicago Match Rules provide that the CHX will pay the market maker responsible for the order with the highest priority liquidity fee or credit $.00125 per share for each order executed in Chicago Match, other than orders entered from the specialist's book and other than orders of other Chicago Match market makers. *See* proposed Rule 15(c) of Article XXXVII.

market maker with an incentive to provide guarantees.[35]

G. Reporting

Those orders that have been executed in the cross will be transmitted in a timely manner by Chicago Match to the Exchange for recordation and reporting to the Consolidated Tape. The CHX will report trades to the Consolidated Tape or Nasdaq, with one trade report for each stock executed in the Chicago Match. That trade report will include the total number of shares executed in that stock and a price equal to the cross price plus (or minus) the volume weighted average of liquidity fees paid (or liquidity credit received) for that stock. Trades will then be cleared by the designated clearing firm. After receiving an execution report, users will be able to reallocate trades to different clearing brokers, if desired. Immediately after the cross, users will be notified if their orders have been executed. If an order was not executed, the user may receive a "near match" administrative message, described above.

H. Trading Halts

The Chicago Match rules provides that in the event of a halt in trading pursuant to CHX Article IX, Rule 10A (trading halts due to extraordinary market volatility),[36] the Exchange may delay the cross time until trading is permitted under that rule.[37]

I. Short Sales

In order to ensure that an order to sell short will have no market impact, no order to sell short will be permitted to be executed if it includes a liquidity fee. Liquidity credits, however, will be allowed.[38]

J. Surveillance

To protect against any potentially manipulative activity, the Exchange will, among other surveillance procedures, monitor quote changes prior to the match and shortly thereafter to identify unusual trading activity. In addition, by varying the cross time each day, the Chicago Match was designed to make it inherently more difficult to manipulate the Consolidated Best Bid and Offer in order to receive a more favorable execution.

III. Comments and the CHX Response to Comments

A. The NYSE's First Comment Letter

The Commission received two comment letters on the proposal from the NYSE recommending that the Commission disapprove the creation of Chicago Match. The first NYSE comment letter, submitted before publication of the amendments to the CHX proposal, summarizes the Chicago Match, raises concerns about investors' orders, and discusses why the NYSE believes the CHX proposal is inconsistent with the requirements of the Exchange Act regarding the national market system's ("NMS") disclosure and market integration requirements.[39] The NYSE asserts that the Chicago Match would be a facility of the CHX, a national securities exchange, and as such, the Commission cannot approve the proposal unless it concludes that the Chicago Match is consistent with Sections 6 and 11A of the Exchange Act.[40] The NYSE asserts that the Chicago Match is not a passive order crossing system but rather a private auction being conducted outside existing exchange facilities that are designed to protect investors.

The NYSE also believes that the CHX is attempting to operate a form of "proprietary trading system" ("PTS") or exempt exchange. The NYSE states that the Commission has limited the operation of PTSs and refused to allow national securities exchanges to operate them. The NYSE asserts that if the Commission decides to approve the Chicago Match and applies the standards applicable to exempt exchanges and PTSs, it should do so only after a formal review of its PTS policy. The NYSE further asserts that if such review results in a change of Commission policy, the Commission should announce that all national securities exchanges are free to offer private systems outside existing NMS regulations.

The NYSE expressed concern that the Chicago Match's failure to report the true price to the Consolidated Tape Association ("CTA") would mislead investors. The NYSE asserts that the true price of the executions includes liquidity charges.[41] The NYSE disputes the CHX's characterization of the liquidity charges as "fees," asserting that when one investor's payment is simply passed through to the investor on the other side of the trade, the payment is actually a part of the price of the security purchased. Thus, the NYSE asserts that the liquidity charges should be included in the price of the transaction.[42]

The NYSE states that the proposal raises two transparency concerns. First, the NYSE asserts that Exchange Act Rule 11Aa3–1[43] requires all exchanges to file a transaction reporting plan for securities traded through its facilities. Such plan must provide for the collection and dissemination of "transaction reports" that contain, *inter alia*, the price associated with a transaction in a security. The NYSE essentially argues that the original proposal left open the possibility of liquidity fees not being reported as a part of the price, thus violating Rule 11Aa3–1.

Second, the NYSE asserts that the CHX is proposing a private auction market outside of the NMS quotation facilities. The NYSE states that the Chicago Match raises market structure issues similar to the issues it claims are raised by the "Selectnet" System operated by the National Association of Securities Dealers ("NASD").[44] The NYSE asserts that both Selectnet and Chicago Match are inappropriately driven by orders that are hidden from public view and that do not have the opportunity to interact with trading interest from other markets. The NYSE further asserts that the presence of the

[35] In the event that there is more than one market maker in an issue, that ⅛ of a cent per share fee will be paid to the Chicago Match market maker that enters the highest liquidity fee or lowest liquidity credit. If more than one Chicago Match market enters the same fee or credit, such fee will be pro-rated. An additional exchange fee will be imposed on all users equal to the liquidity fee to be paid with respect to a particular order, and an exchange credit will occur that is equal to the liquidity credit to be received. The clearing broker will collect all fees from institutions and submit the appropriate amounts to the MCC. In turn, MCC will pay the appropriate amounts to clearing brokers for forwarding to institutions.

[36] CHX Article IX, Rule 10A.

[37] Trading in the Chicago Match will, under all circumstances, be halted in accordance with the provisions of CHX Article IX, Rule 10A.

[38] Rules 3b-3 and 10a-1 under the Act govern short-sale activities. The CHX requested short-sale relief which was granted separately by the Division of Market Regulation by way of exemptive letter from Brandon Becker, Director, Division of Market Regulation, SEC, to George T. Simon, dated November 30, 1994, ("Exemptive Letter").

[39] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated May 2, 1994 ("NYSE Letter No. 1").

[40] Section 6 of the Exchange Act governs the activities of national securities exchanges and it sets conditions for registration as a national securities exchange. Section 11A of the Exchange Act governs the national market system for securities and securities information processors. 15 U.S.C. § 78(f) and (k) (1988).

[41] The NYSE's comment is based on the original CHX filing, which would have effected trades at a single price based on the current inside quotation. The CHX would have reported this price to the CTA for dissemination to the investing public.

[42] The NYSE further asserts that the CHX has acknowledged that the liquidity charges or fees are actually a part of the price in its Chicago Match marketing material.

[43] 17 CFR 240.11Aa3–1 (1994).

[44] The NYSE states that it previously commented on the "Selectnet" system by way of a Letter from Janes E. Buck, Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated October 30, 1992.

"near match" function emphasizes that the proposal is merely a hidden auction market conducted outside of the NMS because the "near match" function allows the participants to have a broker negotiate the transaction outside of the auction process. The NYSE concludes that, while the Commission has sanctioned this result in the case of PTSs, there is no precedent for allowing a national stock exchange to operate such a "hidden auction."

The NYSE letter also asserts that the Chicago Match violates Exchange Act Rule 11Ac1–1 (the "Firm Quote Rule" or "Quote Rule").[45] The NYSE states that, like the Selectnet trading interest, Chicago Match orders that are displayed to other Chicago Match participants are bids and offers under the Commission's rules because "bid" and "offer" are defined as the "prices communicated by an exchange member * * * to any broker or dealer, or to any customer, at which he is willing to buy or sell one or more round lots of a reported security."[46] The NYSE states that Chicago Match users are bidding for and offering stock in accordance with the definition in Rule 11Ac1–1 and because the trading interest is firm, the CHX must take these quotations into account in calculating the best bid and offer that it provides to the Consolidated Quote System ("CQS").[47]

The NYSE believes that the original proposal would lead to a failure to protect displayed limit orders. The NYSE states that the Intermarket Trading System ("ITS") has rules discouraging trade throughs, *i.e.*, the trading of a stock in one market at a price inferior to that in another market. Similarly, the ITS "Block Policy" provides price protection for quotations at the quoted price when a Block Policy transaction prints at inferior prices. The NYSE states that the Chicago Match proposal violates these price protection rules. The NYSE further asserts that the Chicago Match would "formally bifurcate the retail and institutional markets, allowing large institutional investors to trade outside the current market, without providing price protection for publicly-displayed retail customer limit orders."[48]

The NYSE asserts that the initial proposal[49] would allow the Chicago Match to accept short sales and would therefore operate in violation of Exchange Act Rule 10a–1 ("Short Sale Rule"), which prohibits a short sale at a price below the last different reported price. The NYSE asserts that the system would allow the seller to sell stock at a price that is actually below the price reported to the tape.

Finally, the NYSE argues that the Chicago Match should not be able to trade securities that are neither listed on the Exchange nor traded pursuant to unlisted trading privileges ("UTP").[50] The NYSE states that pursuant to Sections 5, 6 and 12 of the Act, an exchange can trade only securities that are registered under the Act (or exempt from registration), and then only if the securities are listed on the exchange or if the exchange receives UTP.

B. The NYSE's Second Comment Letter

The NYSE filed a second comment letter with the Commission[51] after publication of the first four amendments to the proposed Chicago Match rules.[52] The second letter states that the proposed amendments fail to address the problems associated with Chicago Match. The NYSE continues to believe that the Chicago Match will conduct an auction based on hidden liquidity charges. The NYSE states that the proposal presents transparency concerns and would allow CHX specialists to trade ahead of customers.

First, the NYSE believes that the reporting methodology/plan proposed by the CHX continues to violate the Commission's rules and the CTA plan. Because the final Chicago Match proposal fails to require a report of the price at which the transaction would be executed, the NYSE states that the Chicago Match actually would provide inaccurate trading information, thereby violating the reliability of the tape.

Second, the NYSE letter asserts that the Chicago Match will allow specialists to trade ahead of customer orders. The NYSE argues that, because of liquidity credits, a specialist quote that is entered into the Chicago Match may be able to have priority over customer orders entered into the system.

C. The CHX's Responses

In June of 1994, the CHX submitted a letter to the Commission responding to the NYSE's first comment letter.[53] The CHX states that the NYSE requests that the Commission disapprove the Chicago Match because it is different from floor based trading systems existing on traditional exchanges. The CHX believes that this fact alone should not warrant Commission disapproval of the Chicago Match. The CHX states that, to the contrary, the "National Market System envisions the emergence of different trading vehicles and systems in response to market developments."[54]

The CHX asserts that the Chicago Match is not a hidden market but is designed to bring together buying and selling interest on traditional exchanges with institutional trading interest that has preferred to do business on a more anonymous basis. The CHX also asserts that, unlike a PTS, the Chicago Match is a part of a registered securities exchange and, therefore, is subject to full Commission regulation, and unlike a PTS, the Chicago Match is integrated with the CHX trading floor.

The CHX disputes assertions that the Chicago Match actually sponsors hidden quotations that must be disseminated through CQS. The CHX asserts that buying and selling interest in the Chicago Match does not constitute bids or offers within the meaning of the Firm Quote Rule. The CHX states that in order to constitute a bid or offer within the purview of the Firm Quote Rule, an order must be disseminated at a specific price. The CHX states that none of the indications in the Chicago Match are at a specific price; rather the execution price is a function of the Consolidated Best Bid and Offer at the randomly selected execution time. As such, the indications are not required to be disseminated pursuant to the Firm Quote Rule. The CHX asserts that, similarly, the CQS facilities that were

[45] 17 CFR 240.11Ac1–1 (1994).

[46] NYSE Letter No. 1, citing Exchange Act Section 6(c)(1).

[47] The NYSE states that paragraph (b)(1)(i) of the Firm Quote Rule requires an exchange to collect, process and make available to quotation vendors the best bid and best offer "communication on the floor of the exchange . . . by any responsible broker or dealer." The NYSE also states that paragraph (a)(3)(i) of that rule defines a responsible broker or dealer basically as any member of the exchange.

[48] NYSE Letter No. 1 at 6.

[49] As of the time of filing of Amendment No. 1.

[50] The NYSE states that, "there appear to be no limits on the securities to be included in the Chicago Match. These could be (i) securities listed on another exchange for which the CHX does not have UTP; (ii) Nasdaq securities that are outside the Commission's over-the-counter UTP pilot, or (iii) securities that are not registered under the Exchange Act, such as non-U.S. securities exempt from registration under Exchange Act Rule 12q3–2(b), or even non-U.S. securities that should be registered under the Exchange Act and which are neither registered nor exempt from registration. NYSE Letter No. 1 at 7.

[51] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated August 15, 1994 ("NYSE Letter No. 2").

[52] *See* note 8, *supra*.

[53] Letter from George T. Simon, Foley & Lardner, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1994. The CHX also amended its filing, and submitted a second letter giving greater detail about the institutional access issue. Letter from George T. Simon, Foley & Lardner, to Sharon Lawson, Assistant Director, SEC, dated July 25, 1994. The substance of this second letter is incorporated into the *Discussion* section, *supra*.

[54] *Id.* at 1. the CHX also points out that all other national securities exchanges were invited to participate in the Chicago Match but none requested to participate.

designed by the NYSE are incapable of processing indications without prices. Thus, even if CQS wanted to disseminate Chicago Match indications, it could not do so.

The CHX response letter states that, without resolving the issue of whether liquidity fees are a part of the execution price or not, these fees are reported in cents and thus not reportable on the Consolidated Tape.[55] This point, however, has been largely addressed because, as previously noted, the CHX has finalized its tape reporting process to include reporting of an average weight of liquidity fees. The cross price plus or minus the average liquidity fee or liquidity credit for each stock stated in up to 1/256ths will be reported to the Consolidated Tape or Nasdaq. In addition, the maximum liquidity fee or liquidity credit is limited to ½ of the spread of the Consolidated Best Bid and Offer at cross time, regardless of the size of the spread.

The CHX amended its proposal to address the NYSE's concern that trades executed in the Chicago Match could trade through another market's published quotations if liquidity fees are deemed to be a part of the price. The amendment will change the cross price of the match to the mid-point between the Consolidated Best Bid and Offer regardless of the size of the spread and limit the maximum size of liquidity fees and liquidity credits. If a liquidity fee is greater than ½ of the spread of the Consolidated Best Bid and Offer at cross time, it will be reduced to ½ of the spread at cross time. The Chicago Match will not permit liquidity credits to be received in an amount greater than ½ of the spread of the Consolidated Best Bid and Offer. The CHX states that these changes will eliminate the possibility of trading through another market's published quotations.

The CHX states that it disagrees with the NYSE's assertions that the Chicago Match's plan to permit paired orders will violate Section 12 of the Act. The CHX further states that, while it disagrees with the NYSE's view on this, it has filed amendments to its rules to preclude orders from being entered in securities not traded on the CHX.[56]

Finally, the CHX disagrees with the NYSE's concern that short sale orders will be displayed through the system and thereby influence the market. The CHX states that short sale orders are currently displayed on every market whenever a short sale offer is the best offer in the market. The CHX further states that the Short Sale Rule has never prohibited the dissemination of quotations reflecting offers to sell short.

The CHX also disputes the NYSE's general argument that short sales through the Chicago Match should be prohibited. The CHX states that the Chicago Match is a passive trading system that is derivatively priced. As such, trades executed through the system cannot impact the market by exerting downward pressure on prices.

IV. Discussion

After careful consideration of the comments received, as well as applicable statutory provisions, the Commission believes that the proposed Chicago Match is consistent with the Act, and in particular, Sections 6(b)(4), 6(b)(5), and 11A of the Act. Separately, the Division of Market Regulation has granted the CHX exemptions for the Chicago Match from the Short Sale Rule, the Firm Quote Rule, and Rule 11Ac3–3.[57]

The Commission believes that the Chicago Match is consistent with Section 11A(a)(1)(B) of the Act which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations. The Chicago Match employs significant new information technology and an automated system that adds to the existing trading facilities of the CHX. As a result, the Chicago Match will serve as an innovative adjunction to the CHX's existing market structure.

The Commission historically has encouraged the creation of new electronic trading systems such as the Chicago Match that may contribute to increased execution alternatives available to investors. At the same time, it is important to ensure that new exchange trading systems are consistent with the investor protection and fair and orderly market standards contained in the Act. The Commission believes that the Chicago Match achieves this objective.

The Chicago Match represents a blending of some of the attributes of off-exchange trading systems with the market making and brokerage features of the CHX trading floor. In addition, it will blend the features of a unitary call market with the continuous auction of the CHX floor. The operation of such a hybrid system will differ in important respects from the traditional trading floor design. The Commission disagrees with assertions that these differences would cause the Chicago Match to violate Exchange Act provisions. While the proposal does involve regulatory issues regarding transparency, institutional access, and regulatory structure, for the reasons discussed below, the amended proposal adequately addresses these issues and is consistent with the maintenance of free and open markets and investor protection in accordance with Section 6(b)(5) of the Act.[58]

First, the Commission believes that, contrary to the NYSE's assertions, the Chicago Match is properly regulated as a facility of an exchange and not as a proprietary trading system.[59] The Chicago Match will use exchange equipment, including software and lines as well as exchange personnel, to run the system. The Chicago Match will also include CHX market maker participation as well as CHX's Midwest Clearing Corporation to clear trades. Therefore, the Chicago Match will be using the CHX's premises, property, and services for effecting and reporting Chicago Match transactions and, thus, will be using the facilities of an exchange as defined in Section 3(a)(2) of the Act.[60]

Regulating the Chicago Match as a "facility" of the CHX is consistent with the approach the Commission has followed in similar cases. For example, the NYSE's off-hours trading system is regulated as a facility of the NYSE and not as a separately operated PTS.[61] Indeed, if another exchange wanted to operate a similar system to Chicago Match, it would also be permissible as a facility of that exchange.

Second, the Chicago Match adequately displays orders and reports prices. The NYSE, in its comment letters, expressed concern that the Chicago Match transaction prices reported to the Consolidated Tape will

[55] The CHX response letter stated that it amended its rules to require liquidity fees to be reported as administrative messages on the Consolidated Tape.

[56] Amendment No. 3 would amend Rule 3 to provide that only exchange contracts in securities that are listed or admitted to unlisted trading privileges on the Exchange may be entered into the Chicago Match.

[57] *See* Exemptive Letter, *supra* note 38.

[58] 15 U.S.C. § 78(f)(5) (1988).

[59] Section 3(a)(2) provides that the term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communications to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.

[60] An opposite conclusion could lead to the situation where an exchange creates a separate trading system to avoid exchange regulation by directing its core operations to the "separate" system.

[61] Because the Chicago Match will be operated as a facility of an exchange, the Commission does not need to resolve issues relating to the regulation of PTSs in order to address the CHX proposal.

be inaccurate due to the use of liquidity fees and credits, and therefore, Chicago Match would violate Rule 11Aa3–1 under the Act. Rule 11Aa3–1 provides for the collection and dissemination of "transaction reports" that contain, among other things, the price associated with a transaction in a security. The Commission disagrees with the NYSE's concern and instead believes that, as amended, the Chicago Match is consistent with rules regarding the dissemination of quotations and reporting of transactions. The amended Chicago Match rules require the CHX to report one trade for each stock executed in the Chicago Match. This report will include the total number of shares executed in that stock and a price equal to the cross price plus (or minus) the volume weighted average of liquidity fees paid (or liquidity credits received) for that stock. This approach will provide public disclosure of liquidity fees by including them, albeit in averaged form, in the price reported to the tape. The Commission believes that this method informs market participants of the value of the security including any liquidity fees or credits. The Commission further notes that the block market currently reports in average prices. The Commission feels that this reporting will provide investors with adequate transaction price information in compliance with Rule 11Aa3–1 of the Act.[62]

In addition, the NYSE asserts that the Commission should not allow the CHX to operate Chicago Match because the bids and offers on the system are hidden from view, thereby violating the Firm Quote Rule. The NYSE asserts that Chicago Match orders that are displayed to other Chicago Match participants are bids and offers under Rule 11Ac1–1 of the Act and, therefore, should be taken into account when the CHX is calculating the best bid and offer that it provides to the CQS. The Commission disagrees with this assertion.

While it is true that the Firm Quote Rule requires exchanges to collect bids, offers, quotation sizes and aggregate quotation sizes from "responsible brokers or dealers," as defined in the Act,[63] for each reported security or each security admitted to unlisted trading privileges and make them available to quotation vendors, the Commission does not believe that the provisions of this rule apply to the Chicago Match. First, users of Chicago Match may not always be "responsible broker-dealers." Second, the Firm Quote Rule contemplates bids and offers at specific prices. The execution prices in the Chicago Match, however, are a function of the Consolidated Best Bid and Offer at a randomly selected time in the future that is unknown to the users at the time the orders are entered. Because the execution price also may vary with the addition of liquidity fees and credits, prices are essentially unspecified. Third, the Firm Quote Rule contemplates dissemination throughout the trading day of bids and offer quotations with respect to reported securities traded on the trading floor. This will not occur with the Chicago Match, were orders can be entered and changed without being subject to execution until a single cross time.

The Commission also believes that the near match function does not involve a hidden auction market, but rather is simply a service provided to cross participants that fail to achieve execution in the match. This service is no different than a broker negotiating a trade in the crowd on an exchange floor or off an exchange. In the near match function, willing participants will have the option to have a near match broker call them to negotiate an order. There is no further participation at this point with CHX or the Chicago Match.[64]

Third, the CHX has addressed issues relating to its order execution priority. The NYSE expressed concern that trades executed in the Chicago Match could trade through other markets' published quotations if liquidity fees or credits are deemed a part of the price. The Commission believes that the amended Chicago Match rules address this issue. As amended, the Chicago Match rules will limit the maximum size of liquidity fees or credits to one half of the best bid-offer spread at the time of execution. Therefore, even if the liquidity fees and credits are counted as a part of the execution price, no market's quotation will be traded through.

The Commission also disagrees with the NYSE's assertions that by granting the CHX quote priority the Chicago Match will allow specialists to trade ahead of customer orders. The NYSE's concern arises in the case where the specialist enters a proprietary quote. In this instance, it is possible that a specialist could be trading ahead of a separately-entered customer order. The Commission believes that this possibility is not a significant concern in this context for two reasons. First, a specialist could not trade ahead of customer orders that he was holding, but only orders that brokers or other customers separately entered into the system. Second, a customer has the choice to enter an order by sending it to the CHX floor (in which case it will be displayed) so that his order will be a part of the specialist's quotation if the customer is concerned about the possibility of a specialist trading ahead of his order.

Fourth, the Commission believes that the Chicago Match, as finally amended, will not raise significant short-sale issues under Rule 10a–1 of the Act.[65] The Division has granted the Chicago Match, as amended, an exemption from this rule[66] because the orders that are eligible to be entered into the Chicago Match are not susceptible to the abusive practices that the rule was designed to prevent. The final Chicago Match rules do not allow short sellers to enter a liquidity fee, and thus any order to sell short is less likely to be used for manipulative purposes. Moreover, the current Chicago Match rules provide for order execution at midpoints between the spread, and therefore Chicago Match transactions will not change the inside market price. In addition, the Chicago Match pricing system is strictly derivative in nature and thus we believe

[62] The CHX has informed the Division that Chicago Match trades can be reported in up to 1/256ths, thereby allowing for greater accuracy in this system of volume weighted trade reporting.

[63] Rule 11Ac1–1 defines a "responsible broker or dealer," when used with respect to bids or offers communicated on the floor of an exchange, as "any member of such exchange who communicates to another member on the floor of such exchange, at the location (or locations) designated by such exchange for trading in a reported security, a bid or offer for such reported security, as either principal or agent." The Rule provides, however, that if two or more members of an exchange have communicated on the floor bids or offers at the same price, each member is a "responsible broker or dealer" with respect to that bid or offer, subject to the rules of priority and precedence then in effect on the exchange. Furthermore, if a member represents as agent another member's bid or offer, only the member representing the bid or offer on the floor will be considered the "responsible broker or dealer."

[64] Users who have entered orders which are not executed can also receive indications of interest from CHX floor brokers and may choose independently to contact a floor broker to negotiate a trade.

[65] Paragraph (a) of Rule 10a–1 covers transactions in any security registered on a national securities exchange, if trades in such security are reported in the consolidated transaction reporting system. A short sale of a reported security listed on a national securities exchange may not be effected at a price either: (1) below the last reported price of a transaction reported in the consolidated transaction reporting system ("minus tick"), or (2) at the last reported price if that price is lower than the last reported difference price ("zero-minus tick").

[66] A short sale is defined in Rule 3b–3 under the Act as any sale of a security that the seller does not own or any sale that is consummated by delivery of a security borrowed by, or for the account of, the seller. Rule 3b–3 further provides that a person shall be deemed to own a security only to the extent that the person has a net long position in that security.

it is unlikely to lend itself to short-sale abuses.

Fifth, the Commission believes that the Chicago Match has adequate controls over non-member access. The Act contemplates that transactions on a national securities exchange would be conducted by "members." Section 3(a)(3)(A) of the Act refers to transactions being conducted by various categories of exchange "members." Section 6(c)(1) of the Act states that national securities exchanges shall deny membership to any person who is not a registered broker or dealer or any natural person who is not, or is not associated with, a registered broker or dealer.[67] The Chicago Match, however, allows non-members to enter orders into the system if a CHX member is responsible for controlling and clearing these orders.

The Commission believes that the Chicago Match does not violate the Act by allowing some limited non-member access to its system. First, a non-member entering orders may only do so after arranging with a CHX member to be legally responsible for the orders the non-member enters into the Chicago Match. The non-member must notify the CHX of this arrangement with the CHX member.

In addition, each non-member must enter into a Non-Member User's Agreement with the CHX wherein the non-member agrees to be bound by the applicable rules of the Exchange. The CHX asserts that the Non-Member User's Agreement, by its express terms, gives the Exchange control over non-member users. This agreement states that the CHX has "the right to terminate the user's use of, and access to, the Chicago Match, without prior notice for any reason * * * or no reason whatsoever." The CHX states that this authority to remove the non-member user's Chicago Match terminal will allow the Exchange to act quickly to react to any problems with a non-member user.

Finally, the CHX asserts that there will be supervision over non-members through the use of the clearing agreement.[68] This agreement provides that the clearing member agrees to clear all trades for the non-member users up to a specified dollar amount. Each user's maximum user threshold will be programmed into the Chicago Match to prevent the non-member user from exceeding its threshold. Orders that exceed the programmed threshold will be rejected and will not be included in the match. Clearing members will review daily reports of trades in the system which will allow for the early detection and correction of problems.[69]

The Commission agrees with the CHX's assertions that non-member use of the Chicago Match can be analogized to non-member access to the NYSE's Designated Order Turnaround System (the revised system is now referred to as "SuperDot").[70] The NYSE's SuperDot System allows computer terminals to be placed with the customers of members who may then send their orders directly[71] to the NYSE for processing. SuperDot requires NYSE members to monitor customers' electronic orders and to provide the exchange with an acknowledgment statement indicating their responsibility for orders.[72] The Commission believes that: (1) the requirement that Chicago Match users gain access only through an arrangement with a CHX member, which has legal responsibilities as to all user activities described above; (2) the Chicago Match's clearing thresholds for non-members; (3) the ability to immediately terminate a user's access to Chicago Match; and (4) the fact that CHX matches currently will occur only once a day,[73] all serve to assure sufficient control by CHX members over the activities of non-members to satisfy the requirements of the Act.

Finally, the Commission believes that the Chicago Match is consistent with Section 6(b)(4) of the Act which requires the equitable allocation of reasonable dues and fees among members and persons using exchange facilities. The differentiation of fees between displayed and non-displayed orders is reasonable in that it is intended to encourage the display of orders. Likewise, the payment of fees to market makers is reasonably intended to provide incentives for market makers to provide liquidity to the system and increase the match rate.

V. Conclusion

In summary, the Commission believes that the CHX has presented a proposal that satisfies the standards under the Act relating to national securities exchanges. In analyzing the CHX proposal, the Commission recognizes that the Chicago Match is a mixture that brings together features of a call market with the market making capabilities of the CHX floor. Obviously, such systems represent certain challenges in fitting into the traditional regulatory mold envisioned for an exchange system under the Act. For the reasons discussed above, however, we believe that the CHX has adequately addressed the transparency, institutional access, and auction market trading concerns. The combination of the limited nature of the proposal as a once-a-day call market, the integration of the CHX quote into the match, the limitations designed to prevent trade throughs of the Consolidated Best Bid and Offer, the reporting of trades to the tape including average weighted liquidity fees and credits, the limitations of access through agreements with a CHX clearing member, and the fee structure to encourage the display of orders during the match, all lead the Commission to conclude that the proposal is consistent with the Act.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[74] that the proposed rule change (SR-CHX-93-19) be, and hereby is approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-30028 Filed 12-6-94; 8:45 am]

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[67] Section 3(a)(3)(A) of the Act also defines members as natural persons permitted to effect transactions on the floor of the exchange without the services of another person acting as a broker (*i.e.*, an exchange member such as a registered trader).

[68] *See* letter from George T. Simon, Attorney, Foley & Lardner, to Sharon Lawson, Assistant Director, SEC, dated July 25, 1994.

[69] The CHX also states that the clearing member can terminate the non-member user's access to the Chicago Match by terminating the give-up agreement at will and this would cause the CHX to immediately terminate the non-member user's access to Chicago Match.

[70] The SuperDot System is an electronic order-routing system that enables NYSE members and their customers to quickly transmit market and limit orders in all NYSE-listed securities directly to the specialist post where the securities are traded, or to the member firm's booth. After the order has been executed in the auction market, a report of execution is returned directly to the member firm office over the same electronic circuit that brought the order to the trading floor, and the execution is submitted directly to the comparison system.

[71] Customers must obtain the electronic means to access SuperDot through a broker-dealer member. In some cases, the member's participation in the subsequent transmission of orders is limited to providing this access.

[72] NYSE Information Memo Number 89-6, January 25, 1989.

[73] The CHX has indicated that it may wish to add more matches, upon Commission approval. The CHX would have to submit a proposal pursuant to Section 19(b) of the Act to add additional matches during the trading day.

[74] 15 U.S.C. 78s(b)(2) (1988).

[Release No. 34–35032; File No. SR–CBOE–94–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Long Term Equity Options ("LEAPS") With a Duration of up to 60 Months Until Expiration

November 30, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 1994, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 5.8 to permit the listing of options with a duration of up to 60 months (*i.e.*, five years). The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list options with a duration of up to 60 months (*i.e.*, five years). The Exchange presently has authority to list long-term equity options ("LEAPS") that expire from 12 to 39 months from the time they are listed.[3] The Exchange represents that there has been increasing member firm and customer interest in longer term instruments. Therefore, the Exchange is proposing to amend Exchange Rule 5.8 to permit the listing of options that expire up to 60 months from the time they are listed. In addition, the Exchange proposes to amend Rule 5.8 to allow up to ten additional expiration months for LEAPS, as opposed to the six additional months currently allowed.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–94–42 and should be submitted by December 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30027 Filed 12–6–94; 8:45 am]

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* CBOE Rule 5.8.

[4] 15 U.S.C. § 78f(b)(5) (1988).

[5] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–35023; File No. SR–Phlx–94–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange Relating to Inter-Currency Spread Priority

November 29, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 1, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Rules 1033 and 1066 to allow spread priority for eligible spreads between two different

[1] 15 U.S.C. 78s(b)(1) (1988).

foreign currency options ("FCOs"). For example, a Deutsche mark call and a French franc put could be executed as a spread, such that the bid/offer could be expressed as a net credit or debit and a single execution could occur as long as at least one individual component (leg) of each spread is executed at a better price than the established bid/offer and no leg is executed outside of the established bid/offer for that option contract.

In order to permit the execution of inter-currency spreads, a definition of this type of order is proposed to be added to Phlx Rule 1066, as a subcategory of "spread" orders, which is a subcategory of "hedge" orders. Also, the Phlx proposes to adopt new paragraph (i) to Rule 1033, which establishes spread priority principles for inter-currency spreads. On November 18, 1994, the Phlx filed Amendment No. 1 to the proposal to renumber a proposed paragraph due to recent changes to Rule 1033.[2]

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Currently, an option spread is executable as a single transaction at a total net debit or credit with one contra-side, pursuant to Phlx Rule 1033(d). Under this provision, an eligible spread can be afforded spread priority as long as the net credit/debit improves the established market for the spread as measured by the aggregate price of the respective legs if executed individually.

The Commission recently approved a Phlx proposal to expand the spread priority provisions applicable to FCOs to include three-way, ratio, and multi-spread transactions.[3] Specifically, that proposal expanded upon the existing requirement (in Rule 1033(d)) to improve the established market as follows: at least one options leg must be executed at a better price than the established market for that option as well as that no option leg be executed outside of the established market for that option.[4]

The purpose of this proposal is to extend spread priority to spreads involving two different foreign currency options. For example, a spread could be executed between any two FCOs, American-[5] or European-style[6] expiration, and any expiration date (regular, month-end, or long-term). Inter-currency spread priority pursuant to the proposed rule change would not, however, be available for cross-rate, cash/spot, or the Exchange's customized FCOs.

According to the Phlx, absent spread priority, inter-currency spreads can be executed as contingency orders pursuant to Phlx Rule 1066. For example, an FCO floor broker would quote a French franc market as well as a Swiss franc market, in each respective trading crowd; then, the floor broker would announce "99 bid for 99 Sep 99 French franc calls if i can sell 99 Dec 99 Swiss franc puts at 99." However, each component of the spread, however, must be bid/offered individually, which, according to the Exchange, generally means that each component is executed at a price better than the established bid/offer. In addition, the Exchange believes that because each leg must be executed between the established market, such contingency orders are more likely to be broken up by market interest in one leg, such that the end result may be a different number of contracts for each leg.

Rule 1066(f)(1) defines a spread as an order to buy a stated number of option contracts and to sell the same number of option contracts, in a different series of the same class of options. The Exchange now proposes to adopt Rule 1066(f)(1)(A) to define inter-currency spreads because the existing definition requires that both orders be for the same class of FCOs, which does not allow for spreads involving FCOs in different currencies.

The Exchange believes that executing inter-currency spreads subject to a spread priority provision is appropriate for several reasons. First, inter-currency spreads provide a trading strategy for FCO market participants based on the interplay between the currencies of two countries, similar to the advantages and opportunities associated with cross-rate FCOs. The Exchange believes that the availability of such strategies should enhance liquidity in existing FCOs.

Second, the Phlx emphasizes that inter-currency spreads are not a new trading strategy, as they are currently executable as two separate, contingent orders. Instead, inter-currency spread priority is intended to facilitate the execution of such orders, which, according to the Exchange, often proves to be difficult. For example, the execution of inter-currency spreads as contingency orders may present a logistical problem as floor brokers must, in exercising due diligence, shuttle between two trading crowds or, to prevent a trade from occurring while the floor broker is in the second crowd, utilize two floor brokers to execute such an order.

The requirement in proposed Phlx Rule 1033(i) that each leg of an inter-currency spread be executed at or within the market for the individual leg, and that at least one leg is executed at a price which improves the established market, should, according to the Exchange, protect investors and the public interest as well as prevent manipulative acts and practices. The Exchange states that this requirement is also consistent with Phlx Rule 118 which provides that when a bid/offer is clearly established, no bid/offer outside that price shall be established. The Exchange further believes that spread priority for inter-currency spreads should facilitate a more simplified execution procedure for such orders.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and with Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

[2] *See* Letter from Edith Hallahan, Phlx, to Michael Walinskas, Derivative Products Regulation, SEC, dated Nov. 17, 1994.

[3] *See* Securities Exchange Act Release No. 35015 (November 29, 1994).

[4] As a result, according to the Phlx, the net credit/debit necessarily improves the established market for the spread (the current standard), because the market for at least one leg is bettered.

[5] An American-style option is one that can be exercised at any time prior to expiration of the option.

[6] A European-style option is one that can only be exercised during a specified period immediately prior to expiration of the option.

[7] 15 U.S.C. 78f(b)(5) (1988).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–23 and should be submitted by December 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30029 Filed 12–6–94; 8:45 am]

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[8] 17 CFR 200.30(a)(12) (1993).

[Release No. 34–35028; File No. SR–Phlx–94–57]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Enhanced Parity Split for Index Option Trades

November 30, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 1, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1014(g) and Commentary .17 thereunder in order to provide an enhanced parity split for specialists trading index options. The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

On May 25, 1994, the Commission approved the Exchange's proposal to provide new options specialists units ("New Units") trading newly-listed equity options classes with an enhanced participation in parity equity option transactions ("New Specialist Split").[2] On August 26, 1994, the Commission approved, as a one-year pilot program, the Exchange's proposal to provide an enhanced parity split in certain assigned equity options classes for option specialists not qualifying for the New Specialist Split.[3] In each of those filings, the Phlx indicated that the enhanced parity splits would be applicable to equity options specialists, however, the Phlx represents that the intent of the Exchange in proposing those rules was to limit the proposals to options traded on the Phlx's Equity Option Floor, which would specifically include index options but exclude foreign currency options. The Exchange represents that index options are traded on the Equity Options Floor and that index option specialists are not separate and distinct from equity options specialists trading at the Exchange. Accordingly, the Phlx hereby proposes to amend Phlx Rule 1014(g) and Commentary .17 thereunder in order to expand the enhanced parity split proposals discussed above to expressly include transactions in index options traded on the Exchange's Equity Options Floor. Because the Exchange represents that this was the original intent of the proposals discussed above, the Exchange does not expect any new objections to be raised by amending its rules to extend the enhanced parity split to trades in index options.

The Phlx believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade by providing specialists with additional incentives to make deep and liquid markets in index options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose a burden on competition.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Specifically, this proposal allows New Units to execute 50% of the contracts in transactions involving newly-listed equity options classes where the New Unit is on parity with one Registered Options Trader ("ROT") and 40% of the contracts in such transactions where the New Unit is on parity with two or more ROTS. *See* Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994).

[3] Specifically, this proposal provides that in certain circumstances and for certain options classes, an equity option specialist is eligible to receive an enhanced participation in parity equity option trades by being counted as two crowd participants. *See* Securities Exchange Act Release No. 34606 (August 26, 1994), 59 FR 45711 (September 2, 1994) (order approving proposal on a pilot basis until August 26, 1995).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).[4] Specifically, the Commission finds that the Phlx proposal to expand its rules regarding enhanced parity splits for specialists to include index options, in addition to equity options, does not create any regulatory concerns that were not adequately addressed by the Phlx when the Commission approved the enhanced parity splits available to specialists trading equity options.[5] Index options trade on the Exchange's Equity Options Floor and are subject to trading rules substantially similar to those applicable to equity options. Accordingly, the Commission believes that there is no regulatory reason to distinguish between equity and index options with regard the availability of an enhanced participation for specialists in parity option transactions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to provide specialists trading index options with the same benefits available to specialists trading equity options. Additionally, because one of the enhanced parity split proposals was approved as a one-year pilot program,[6] the Commission believes it is appropriate to accelerate approval of the proposed rule change to provide the Exchange with as much time as possible in order to gather data on the effect and utility of the pilot program prior to its expiration. Accordingly, the commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

[4] 15 U.S.C. § 78f(b)(5) (1988)

[5] *See supra* notes 2 and 3.

[6] *See supra* note 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–57 and should be submitted by December 28, 1994.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act[7] that the proposed rule change (SR–Phlx–94–57), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30030 Filed 12–6–94; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. § 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–35033; File No. SR–PHLX–94–32]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 to Proposed Rule Change To Implement a "Wheel" for the Registered Options Trader Contra-Side Participation to AUTO-X Trades

November 30, 1994.

On July 18, 1994, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change that implements a new procedure for assigning contra-side participants to AUTO-X orders. On August 10, 1994, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comment from interested persons.[2] No comments were received. On October 28, 1994, PHLX filed with the Commission Amendment No. 1 in order to clarify certain operations of the Wheel and to amend certain provisions of Floor Procedure Advice F–24.[3] On November 15, 1994, PHLX filed with the Commission Amendment No. 2 which clarifies the interaction between the Wheel and the trading crowd.[4] This order approves the proposal, including Amendments No. 1 and No. 2 on an accelerated basis.

I. Description

The proposed rule change adopts Floor Procedure Advice F–24, AUTO-X Contra-Party Participation (The Wheel), which establishes an automated mechanism for assigning floor traders (*i.e.*, specialists and Registered Option Traders ("ROTs")), on a rotating basis, as contra-side participants to AUTO-X orders.

The AUTO-X system is the automatic execution feature of the Exchange's Automated Options Market ("AUTOM") system.[5] AUTO-X provides customers with automatic executions of eligible option orders at displayed markets.[6] Currently, floor trader contraside participation defaults to the account of

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 34481 (August 3, 1994), 59 FR 40943.

[3] Specifically, Amendment No. 1 will require that an ROT be present in its Wheel assignment area to participate in Wheel executions; that an ROT be actively making a market in options in order to participate in the Wheel; and to permit the Options Committee to conduct the six month review of the Wheel, instead of the Allocation, Evaluation and Securities Committee. Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission (October 24, 1994).

[4] Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Christine Sibille, Office of Market Supervision, Division of Market Regulation, Commission (November 15, 1994).

[5] AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Phlx options trading floor, with electronic confirmation of order executions. On March 31, 1988, the Commission first approved the Phlx's operation of the AUTOM system on a pilot basis. Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390.

[6] Public customer orders up to 25 contracts are eligible for AUTO-X. Securities Exchange Act Release No. 32906 (September 15, 1993), 58 FR 49345. Orders eligible for automatic execution are (1) printed in hard copy form at the floor representative booth of the delivering member organization; (2) displayed on the trading crowd screen with buy/sell information omitted; and (3) printed in hard copy form at the specialist post.

the specialist, and the addition of ROTs or orders from the trading crowd or the specialist's limit order book as contra-side participants to AUTO-X orders requires manual keypunch entries.[7] The Wheel automatically includes eligible ROTs in AUTO-X executions and specifies how such trades will be split among the specialist and ROTs. Customer orders, both on the limit order book and in the trading crowd, will continue to receive priority in accordance with PHLX rules. An ROT, whether on the Wheel or not, also may have priority.[8] If priority is established for the limit order book, a member of the trading crowd, or an ROT, the specialist will stop the Wheel's operation and manually assign the trade to the contra-party with priority.

The specialist and any signed on ROTs will be listed on the Wheel.[9] ROTs must sign on to the Wheel in person on the trading floor from terminals designated by the Exchange. ROTs may sign on before 9:30 a.m. for the entire trading day or before 12:30 p.m. for trading after 12:30 p.m. An ROT may not sign on after 12:30 p.m. for the first time that trading day.

Contra-side participation of AUTO-X orders are assigned to Wheel participants in circular rotation. The specialist receives the first assignment of trades for the day in each respective option. Thereafter, the Wheel assigns trades to ROTs in an order standardized for that day on a random basis.[10] If there are five or more ROTs signed onto the Wheel, the specialist participates in the first trade of the day and every fifth assignment thereafter. Each ten lot or order (whichever is smaller) constitutes an assignment. For AUTO-X orders greater than ten contracts, each ten lot or remaining portion of the order constitutes an assignment. The procedure for rotating trades among participants will be reviewed by the Exchange's Option Committee after six months.

An ROT may sign off the Wheel at any time during the trading day, which becomes effective for all listed options. An ROT may sign off twice each trading day and still be eligible to sign on again that day; after the third sign off, that ROT is no longer eligible for the Wheel that day. ROTs who sign on for the half-day session beginning at 12:30 p.m. may only sign off once and still be eligible to sign on again that day. A floor official may modify the sign on/sign off procedures in extraordinary circumstances.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder. Section 6(b)(5) of the Act provides that the rules of the exchange must promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market, and in general to protect investors and the public interest.[11]

The proposal will help the PHLX to provide an orderly market and to encourage small investor participation in the options markets by facilitating the use of AUTO–X. AUTO–X enhances the Exchange's ability to execute small public customer orders in a timely, accurate, and efficient manner. The manual assignment of contra-participation increases the time needed to execute each trade through AUTO–X. During periods of heavy trading volume, this manual operation may severely restrict AUTO–X's utility. Therefore, the automation of assignments of contra-parties for AUTO–X trades should improve order processing and turnaround time. By not manually entering contra-participant information for each trade, the Wheel should reduce opportunities for keypunching errors. In addition, the Wheel should generally reduce the number of contra-participants for each trade.[12] The reduction in the number of contra-parties to each contract may increase the efficiency of order processing. By enhancing AUTO–X's utility, the proposal should assist in providing a free and open market.

Finally, the Commission finds good cause for approving Amendments No. 1 and No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 provides minor amendments to the procedure consistent with the original proposal. Amendment No. 2 merely clarifies the interaction between the Wheel and the trading crowd and limit order book. The Commission did not receive any comments on the original proposal, which was noticed for the full statutory period.

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 1 and No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendments No. 1 and No. 2 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available at the principal office of PHLX. All submissions should refer to file No. SR–PHLX–94–32 and should be submitted by December 28, 1994.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed file change is consistent with Section 6(b)(5) of the Act.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–PHLX–94–32) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

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[7] Under the previous method, ROTs were eligible for participation when they had established priority or parity at the execution price. Under the proposal, an ROT at parity may only be assigned trades through the Wheel.

[8] An ROT may have price priority (if the best bid or offer is the ROT's alone) or time priority (the ROT's bid or offer was clearly established first at that price).

[9] Specialists must participate on the Wheel. ROTs may participate on the Wheel in assigned issues. ROTs are limited to participating in one Wheel assignment area (two contiguous quarter turrets) at any given time. ROTs must be present in the Wheel assignment area to participate in Wheel executions, although brief, reasonable absences will be permitted. ROTs must be actively making markets in assigned options. ROTs may sign on in individual options. No two associated or dually affiliated ROTs may be on the Wheel for the same option at the same time.

[10] The first ROT is selected randomly from all ROTs that sign on prior to 9:30 a.m. All other ROTs are prioritized for receipt of orders based on the badge numbers following sequentially the first ROT's badge number. If other ROTs sign on for the 12:30 p.m. session, the priority list is re-randomized for that session.

[11] 15 U.S.C. § 78f(b)(5) (1988).

[12] Currently, the specialist and all ROTs with parity or priority at the execution price would be contra-participants to an AUTO–X trade. Under the Wheel, the maximum number of contra-participants would be three. (The maximum permissible size for AUTO–X orders is twenty-five contracts, which would be split into two ten-contract assignments and one five-contract assignment.)

[13] 15 U.S.C. § 78s(b)(2) (1988).

[14] 17 CFR § 200.30–3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 94–30031 Filed 12–6–94; 8:45 am]
BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2754]

Florida (And Contiguous Counties in Georgia); Declaration of Disaster Loan Area

Leon and Wakulla Counties and contiguous counties of Franklin, Gadsden, Jefferson, and Liberty in the State of Florida and Grady and Thomas Counties in the State of Georgia constitute a disaster area because of damages caused by heavy rains and subsequent flooding between October 1 and October 6, 1994 as a result of Tropical Depression #10. Applications for loans for physical damage may be filed until the close of business on January 30, 1995 and for economic injury until the close of business on August 29, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 275406 for Florida and 275506 for Georgia. For economic injury the numbers are 840200 for Florida and 840300 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 29, 1994.

Cassandra M. Pulley,
Acting Administrator.
[FR Doc. 94–30007 Filed 12–16–94; 8:45 am]
BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2756]

Florida; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 28, 1994, I find that Volusia County in the State of Florida constitutes a disaster area as a result of damages caused by Tropical Storm Gordon beginning on November 14, 1994, and continuing. Applications for loans for physical damage may be filed under the close of business on January 26, 1995, and for loans for economic injury until the close of business on August 28, 1995, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308.

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Brevard, Flagler, Lake, Putnam, and Seminole in the State of Florida may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 275606 and for economic injury the number is 840400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 30, 1994.

Bernard Kulik,
Associate Administrator for Disaster Assistance.
[FR Doc. 94–30008 Filed 12–6–94; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Change in Statutory Definition of Public Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of statutory change.

SUMMARY: This document notifies all persons whose operations may be affected by the change in the statutory definition of public aircraft that they will need to take steps now to ensure that their operations meet all applicable safety regulations when the new law goes into effect, or to obtain an exemption.

FOR FURTHER INFORMATION CONTACT: Dave Catey, AFS–220, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–8094.

SUPPLEMENTARY INFORMATION: A new statutory definition of public aircraft was signed into law on October 25, 1994. All persons whose operations are affected by the change in the statutory definition of public aircraft are advised that they must take steps to ensure that their operations meet all applicable safety regulations by April 23, 1995, the date the new law becomes effective, unless by that date they obtain an exemption as provided for by the law. An application for exemption will not stay the effective date of the statute. The following is a notice from the Administrator advising all persons whose operations may be affected by the change in the statutory definition of public aircraft.

Issued in Washington, D.C. on November 23, 1994.

John Walsh,
Senior Attorney, General Legal Services Division.

Appendix—Notice to all Persons Whose Operations may be Affected by the Change in the Statutory Definition of Public Aircraft

On October 9, 1994, Congress passed the Independent Safety Board Act Amendments, which contained a major change in the definition of "public aircraft." Under the previous statutory definition, pubic aircraft were exempt from many types of FAA regulation.

Under the new statute, many of those aircraft will not be subject to FAA safety regulations. For example, when the law becomes effective, aircraft used to transport passengers will, in some circumstances, no longer be considered public aircraft. Therefore, the operators of such aircraft will need to meet civil aircraft requirements for certification, maintenance, training, etc., unless they qualify for narrowly described exemptions. Aircraft operated by the Armed Forces and intelligence agencies, however, will retain their public aircraft status unless operated for a commercial purpose.

The new law will become effective on April 23, 1995. Attached for your information is a copy of the new law. If you intend to use your aircraft in operations that will no longer

be consistent with public aircraft status, then you should start taking steps now to ensure that your operations meet all applicable safety regulations by the time the new law goes into effect, or to request an exemption as described in the new law.

Although the FAA Administrator has certain authority to grant exemptions from the civil aircraft safety regulations to "units of government," the agency expects to invoke its exemption authority only when the public interest clearly demands it. To obtain an exemption under the statute, a unit of government must show that granting the exemption is necessary "to prevent an undue economic burden on the unit of government," and that the aviation safety program of the unit of government is "effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government."

Earlier this year, the FAA announced that it would reconsider whether public aircraft status is lost when one government reimburses another for the use of its aircraft. The FAA invited comments from interested parties. *See* 59 FR 39192 (August 1, 1994). With Congress' passage of the new law, however, this point has been clarified. Now, if there is such reimbursement, the aircraft will be civil aircraft unless the appropriate unit of government certifies "that the operation was necessary to respond to a significant and imminent threat to life or property," and "that no service by a private operator was reasonably available to meet the threat."

If you have questions about how the new law might affect your operations, you may contact Dave Catey, AFS–220, (202) 267–8094. We would appreciate any assistance you can provide in getting this information to other persons or organizations that may be affected by the change of law.

Issued this 3rd day of November, 1994.

David R. Hinson,

Administrator, Federal Aviation Administration.

[FR Doc. 94–30006 Filed 12–6–94; 8:45 am]

BILLING CODE 4910–13–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 234
Wednesday, December 7, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ASSASSINATION RECORDS REVIEW BOARD

TIME AND DATE: 2:00 p.m., December 14.

PLACE: Room 205, 600 E Street NW., Washington, DC.

STATUS: Open to the Public.

TOPICS TO BE COVERED:

- Definition of Assassination Record (including presentation by the National Archives and Records Administration).
- Schedule for First Quarter of Calendar Year 1995.

CONTACT PERSON FOR MORE INFORMATION: Sheryl L. Walter, General Counsel, Room 208, 600 E Street N.W., Washington, DC 20530, Telephone: (202) 724–0088, FAX: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 94–30168 Filed 12–5–94; 12:26 pm]

BILLING CODE 6820–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, December 13, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6350A—Aviation Accident Report: Impact With Blast Fence Upon Landing Rollout, Action Air Charters Flight 990, Piper PA–31–350, Stratford, Connecticut, April 27, 1994.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: December 2, 1994

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–30138 Filed 12–5–94; 8:45 am]

BILLING CODE 7533–01–P

federal register

Wednesday
December 7, 1994

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135
Part 135 Regulatory Review; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135

[Docket No. 27982, Notice 94–33]

Part 135 Regulatory Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments.

SUMMARY: By this notice, the FAA solicits comments from the public, including Part 135 operators that conduct scheduled operations for compensation or hire in airplanes with passenger seating configurations of 10 to 30 seats and aircraft manufacturers, on the recent recommendations from the National Transportation Safety Board (NTSB) related to commuter airline safety. The FAA seeks comment on any aspect of the NTSB recommendations, without limit, including the potential safety benefits and financial costs, if any, for each of the NTSB recommendations. Comments received on the recommendations enumerated in this notice will assist the FAA in determining future regulatory action and may point out specific exceptions or alternatives that should be considered. Comments received will be considered by the FAA in the rulemaking process, as applicable.

DATES: Comments must be received on or before December 30, 1994.

ADDRESSES: Comments should be mailed, in triplicate, to Federal Aviation Administration, Attention: Rules Docket (AGC–200), 800 Independence Ave., SW., Washington DC, 20591. Comments must be marked Docket No. 27982. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

SUPPLEMENTARY INFORMATION: On November 15, 1994, the National Transportation Safety Board (NTSB) issued 10 recommendations to the Federal Aviation Administration as a result of the NTSB's study of commuter airline safety. The FAA is considering rulemaking for each area where rulemaking is appropriate. In announcing these recommendations, the NTSB stated that the standards for safety should be based on the characteristics of the flight operations, not the seating capacity of the aircraft and that passengers on commuter airlines should be afforded the same regulatory safety protections granted to passengers flying on Part 121 airlines.

With this notice, the FAA is soliciting comments on the following recommendations and the FAA's response thereto:

1. Revise the Federal Aviation Regulations such that:

- All scheduled passenger service conducted in aircraft with 20 or more passenger seats be conducted according to the provisions of 14 CFR Part 121.
- All scheduled passenger service conducted in aircraft with 10 to 19 passenger seats be conducted in accordance with 14 CFR Part 121, or its functional equivalent, wherever possible.

2. Require principal operations inspectors to periodically review air carrier flight operations policies and practices concerning pilot tasks between flights to ensure that carriers provide pilots with adequate resources (such as time and personnel) to accomplish those tasks.

3. Revise the Federal Aviation Regulations contained in 14 CFR Part 135 to require that pilot flight time accumulated in all company flying conducted after revenue operations * * * such as training and check flights, ferry flights and repositioning flights * * * be included in the crewmember's total flight time accrued during revenue operations.

4. Revise within 1 year the pilot training requirements for scheduled Part 135 operators such that:

- All pilot training for aircraft with 10 or more passenger seats be conducted in accordance with Subparts N and O of 14 CFR Part 121.
- All pilots are provided mandatory crew resource management training that incorporates the principal components of effective CRM training, as outlined in Advisory Circular AC 120–51A, "Crew Resource Management Training."
- All flightcrew members complete the initial operating experience currently required only of pilots-in-command under Part 135.244.

5. Issue within 6 months a final rule of 14 CFR Part 142 concerning the certification and operation of training centers.

6. Revise the certification standards for Part 25 and for Part 23 (commuter category) aircraft to require that a flight simulator, suitable for flightcrew training under Appendix H of Part 121, be available concurrent with the certification of any new aircraft type.

7. Revise the Federal Aviation Regulations to require all flight attendants to participate, during recurrent training, in emergency drills that allow them the opportunity to use emergency equipment and to practice procedures under simulated emergency conditions.

8. Revise the Federal Aviation Regulations to require that all air carriers operating under Parts 121 and 135 establish a safety function, such as outlined in Advisory Circular AC 120–59, "Air Carrier Internal Evaluation Programs."

9. Establish a joint industry/government task force, such as an Aviation Rulemaking Advisory Committee (ARAC), comprising representatives from the FAA, air carriers, aircraft manufacturers, and the academic community to review the qualification standards and training curriculum of air carrier inspectors. The intent of the task force should be revisions to the qualifying and training standards for air carrier inspectors that will (a) increase their familiarity with air carrier operations and maintenance in general, as well as the specific operations of the air carriers they inspect; and (b) enhance their knowledge of the Federal Aviation Regulations and provide for more standardized interpretation and enforcement of the regulations.

10. Enhance the level of safety at airports served by commuter airlines by:

- Seeking legislative action within 6 months to include in the Airport Certification Program all airports served by air carriers that provide scheduled passenger service.
- Revising and expanding 14 CFR 135, following enactment of the legislative action described in Safety Recommendation A–94–203, to permit scheduled passenger operation only in airports certificated under the standards contained in Part 139, "Certification and Operations: Land Airports Serving Certain Air Carriers."

The FAA requests that commenters be as specific as possible and provide as much detail in comments as necessary to facilitate regulatory decisionmaking. The format that would be most useful to the FAA is a subpart by subpart analysis of the impact of possible rulemaking. Cost information is also particularly useful.

Because of the timeframe recommended by the NTSB, the FAA requests that commenters be timely in their response to this notice. The agency does not anticipate an extension of the comment period, so that regulatory changes may be proposed in a responsive timeframe.

The FAA anticipates that comments provided in response to this notice will assist the agency in adopting or modifying the NTSB recommendations to establish a regulatory framework that will enhance safety in the commuter airline industry while not being overly burdensome on that industry.

Issued in Washington, DC on November 30, 1994.

Anthony J. Broderick,

Associate Administrator for Regulation and Certification.

[FR Doc. 94–30005 Filed 12–1–94; 3:05 pm]

BILLING CODE 4910–13–M

federal register

Wednesday
December 7, 1994

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Mexican Spotted Owl; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD02

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Mexican Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to designate critical habitat for the Mexican spotted owl (*Strix occidentalis lucida*), a subspecies federally listed as threatened under the Endangered Species Act of 1973, as amended (Act). A total of 1,931,264 hectares (ha) (4,770,223 acres) of critical habitat is proposed. This proposed critical habitat designation, if made final, would provide additional protection requirements under section 7 of the Act with regard to activities that are funded, authorized, or carried out by any Federal agency. As information is received by the Service from the Indian Tribal Governments, the Mexican Spotted Owl Recovery Team (Team), Federal and State agencies, and the general public, revisions may be made to this proposal to incorporate that new information. In addition, section 4 of the Act requires the Service to consider economic impact and any other relevant impacts prior to making a final decision on the size and scope of critical habitat. An economic analysis is currently being prepared and notice of its availability will be published in the **Federal Register** and local newspapers.

DATES: Comments will be accepted until March 7, 1995. The Service will hold public hearings on this proposed rule; dates and specific locations for these hearings will be published in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, New Mexico Ecological Services State Office, 2105 Osuna NE., Albuquerque, New Mexico 87113. The complete file for this rule will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, State Supervisor, at the above address (505/883–7877).

SUPPLEMENTARY INFORMATION:

Summary of Proposed Action

This rule proposes to designate critical habitat on certain lands in Arizona, New Mexico, Utah, and Colorado, which now provide habitat or may provide habitat for the Mexican spotted owl, and that are managed for timber harvest. The Team has developed a draft Recovery Plan that identifies commercial timber harvest as the main management regime presenting a threat to Mexican spotted owl habitat.

On February 14, 1994, certain environmental groups and an individual filed a lawsuit in Federal District Court in Arizona against the Department of the Interior for failure to designate critical habitat for the Mexican spotted owl. *Dr. Robin Silver, et al. v. Bruce Babbit, et al.*, CIV–94–0337–PHX–CAM. On October 6, 1994, the Court ordered the Service to, "publish a proposed designation of critical habitat, including economic exclusion pursuant to 16 U.S.C. Sec. 1533(b)(2), no later than December 1, 1994, * * * [and] publish its final designation of critical habitat, following the procedure required by statute and Federal regulations for notice and comment, no later than May 27, 1995." The Service plans to review the information which has been assembled and analyzed by the Team as it makes final determination about designation of critical habitat. It is anticipated that the draft recovery plan will be available for public review and comment in December 1994.

The Service is also pursuing conservation agreements and management programs with various Indian Tribal Governments and the U.S. Forest Service. If agreements can be reached and implementation ensured so that special management consideration or protection is not necessary, the Service may consider excluding those areas from critical habitat. Such management agreements should include commitments to implementation of the recovery plan for the species or equivalent protection.

Background

The Mexican spotted owl is a medium-sized bird ranging from parts of central Colorado and Utah, south through Arizona, New Mexico, and western Texas, then south through Mexico to the States of Michoacan and Puebla. Mexican spotted owl habitat typically consists of dense, multi-storied, montane forests with closed canopies, and deep, cool, fractured canyons. The Mexican spotted owl is threatened by destruction and modification of habitat caused by even-aged timber harvest methods and wildfires, and decreased habitat suitability and potential increased predation associated with habitat fragmentation.

Previous Federal Actions

The entire spotted owl species (*Strix occidentalis*) was classified on the Service's 1989 Animal Notice of Review (54 FR 554; January 6, 1989) as a category 2 species. A category 2 species is one for which listing may be appropriate, but for which additional biological information is needed to support a proposed rule. The northern spotted owl subspecies (*S. o. caurina*) was listed as a threatened species on June 26, 1990 (55 FR 26194), and its critical habitat was designated on January 15, 1992 (57 FR 1796). The California spotted owl subspecies (*S. o. occidentalis*) remains a category 2 candidate.

On December 22, 1989, the Service received a petition submitted by Dr. Robin D. Silver requesting the listing of the Mexican spotted owl as an endangered or threatened species under the Act. On February 27, 1990, the Service found that the petition presented substantial information indicating that listing may be warranted and initiated a status review. In conducting its review, the Service published a notice in the **Federal Register** (55 FR 11413) on March 28, 1990, requesting public comments and biological data on the status of the Mexican spotted owl. On December 6, 1990, the Mexican Spotted Owl Status Review Team completed a draft report, and on February 20, 1991, the Service made a finding, based on the contents of the report, that listing the Mexican spotted owl pursuant to section 4(b)(3)(B)(i) of the Act was warranted. Notice of this finding was published in the **Federal Register** on April 11, 1991 (56 FR 14678). A proposed rule to list the Mexican spotted owl as threatened without critical habitat was published in the **Federal Register** on November 4, 1991 (56 FR 56344).

In the November 4, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might bear on whether the Mexican spotted owl should be listed. The comment period was reopened from May 11, 1992, to September 1, 1992 (57 FR 20073; May 11, 1992) to allow submission of additional comments. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were directly contacted and requested to comment,

and newspaper notices inviting public comment were published in Arizona, New Mexico, Utah, and Colorado. The Service held six public hearings, which were announced in the proposed rule. A notice of the hearing dates and locations was published in the **Federal Register** on January 2, 1992 (57 FR 35), and in notices published in Arizona, New Mexico, Utah, and Colorado newspapers. Interested parties were directly contacted and notified of the hearings.

After a review of all comments received in response to the proposed rule, the Service published a final rule to list the Mexican spotted owl as a threatened species on March 16, 1993 (58 FR 14248). Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. At the time of listing, the Service found that, although considerable knowledge of Mexican spotted owl habitat needs had been gathered in recent years, habitat maps in sufficient detail to accurately delineate these areas were not available. Subsequent to listing, the Service began gathering the data necessary to develop this proposed rule.

On June 25, 1993, and again on August 16, 1993, the Service received petitions to remove the Mexican spotted owl from the List of Endangered and Threatened Wildlife (delist). In subsequent petition findings published in the **Federal Register** (58 FR 49467, 59 FR 15361) the Service addressed the issues raised in the petitions and determined that the petitioners did not present substantial information indicating that delisting the Mexican spotted owl was warranted. The petitioners have legally challanged this decision in Federal District Court in New Mexico in *Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. United States Fish and Wildlife Service, et al.*, CIV 94–1058–MV.

Habitat Characteristics

The physical and biological habitat features essential to the conservation of the Mexican spotted owl, referred to as the primary constituent elements, include those that support nesting, roosting, foraging, and dispersal. These elements were determined from studies of Mexican spotted owl habitat, including habitat structure, habitat use, and prey preferences, throughout the range of the owl.

The vegetative communities and structural attributes used by the Mexican spotted owl vary across its range. The vegetative communities consist primarily of warm-temperate and cold-temperate forests, and, to a lesser extent, woodlands and riparian deciduous forests. The mixed-conifer community appears to be most frequently used in portions of its range (Skaggs and Raitt 1988; Ganey and Balda 1989).

Mixed-conifer forests contain several species of overstory trees. The most common are white fir (*Abies concolor*), Douglas fir (*Pseudotsuga menziesii*), and ponderosa pine (*Pinus ponderosa*). Less common species are southwestern white pine (*P. strobiformis*), limber pine (*P. flexilis*), aspen (*Populus tremuloides*), and corkbark fir (*Abies lasiocarpa* var. *arizonica*).

The understory within mixed-conifer communities provides important roosting sites for Mexican spotted owls. The understory usually contains the same conifer species found in the overstory, with Gambel oak (*Quercus gambelii*), maples (*Acer grandidentatum* and *A. glabrum*), and New Mexico locust (*Robinia neomexicana*) also present. Montane riparian canyon bottoms used by owls in the mixed-conifer zone may contain box elder (*Acer negundo*), narrowleaf cottonwood (*Populus angustifolia*), maples (*Acer* spp.), and alders (*Alnus* spp.).

In southeastern Arizona, owl habitat types include mixed-conifer and Madrean Evergreen Forest and Woodland (Ganey and Balda 1989; Duncan and Taiz 1992). Below the mixed-conifer vegetative zone are found two series of Madrean Evergreen Woodland: the upper oak-pine occurs at 1,675 to 2,200 meters (5,500 to 7,200 feet), and the lower evergreen oak (encinal) occurs at 1,525 to 1,980 meters (5,000 to 6,500 feet). Within these vegetative zones, and particularly at lower elevations, Mexican spotted owls are usually found in steep, forested canyons with rocky cliffs.

At the northern edge of their range in northeastern Arizona, southwestern Colorado, and southern Utah, Mexican spotted owls occur during the breeding season between 1,340 and 2,160 meters (4,400 to 7,100 feet) in canyon habitats within pinyon-juniper woodland (*Pinus edulis* and *Juniperus osteosperma*) or mixed-conifer forests. Canyon habitat is characterized by the cool, humid conditions found in the deep, steep-walled, fractured structures of sandstone slickrock. Canyons frequently contain riparian and conifer pockets, and adjacent slopes and mesa tops are vegetated by a variety of plant associations. Although no studies have been completed, preliminary studies show most Mexican spotted owl activity during the breeding season occuring within and adjacent to canyons. Owls roost in the riparian and coniferous pockets of canyon bottoms, on ledges, or in cavities in the slickrock canyon walls (Gutiérrez and Rinkevich 1991; van Riper and Willey 1992).

Characteristics associated with forested Mexican spotted owl habitat usually develop with increasing forest age, but their occurrence may vary by location, past forest management practices, forest type, and productivity. Although Mexican spotted owl habitat is variable over its range, some general attributes are common to the subspecies' life-history requirements throughout its range. The attributes of nesting and roosting habitat typically include a moderate to high canopy closure (60 to 80 percent); a multi-layered canopy with large overstory trees of various species; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and other evidence of decadence); large snags; accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly.

Forest habitat characteristics are best expressed in older mixed-conifer forests. These characteristics may also develop in younger stands, especially when the stands contain remnant large trees or patches of large trees from earlier stands. Certain forest management practices may also enhance tree growth and mature stand characteristics where the older, larger trees are allowed to persist. Ganey and Balda (1988) found an average of 402 ha (995 acres) of old-growth forest within the 847 ha (2,092 acre) average home range for 3 pairs of radio-monitored owls in northern Arizona. Fletcher (1990) reported an average of 62 ha (154 acres) of old-growth forest and an average of 465 ha (1,149 acres) of suitable habitat within the management territories established by the U.S. Forest Service (USFS) for 359 Mexican spotted owl sites in Arizona and New Mexico. Mexican spotted owl use of old growth may vary greatly among regional habitat types, forest types, and elevational ranges.

Forest habitat required for Mexican spotted owl nesting and roosting appears to be more restricted than that required for foraging. Ganey and Balda

(1994) found significant owl selectivity in habitat use in a comparison of the habitat characteristics of roosting, foraging, and randomly available sites. Roosting sites had larger logs, greater canopy cover, and higher densities and basal areas of both trees and snags than foraging sites and random sites.

Spotted owls apparently use a wider array of habitat types for foraging than for nesting and roosting, including fairly open and non-contiguous forest, small openings, pure ponderosa pine forests, woodlands, and rocky slopes. Use of these components may be determined by their availability and by their proximity to the more characteristic habitat attributes previously described. However, Ganey and Balda (1994) found a greater selectivity in habitat used for foraging than for random sample sites. As did roosting sites, foraging areas had larger logs, greater canopy cover, and higher densities and basal areas of both trees and snags than random sites. Owls also consistently avoided foraging in forests in which the overstory had been partially harvested.

Little is known about the habitat requirements for dispersal. Habitat that meets the species' needs for nesting and roosting may also provide for foraging and dispersal. However, habitat that supports foraging or dispersal does not always provide constituent elements required for nesting and roosting. The definition of the term "dispersal" is frequently limited to post-fledging movements of juveniles. For the purposes of this rule, the Service considers the term to include all movement, including winter shifts in territory and dispersal from natal areas, and to encompass the important biological concepts of connectivity within and between clusters of Mexican spotted owl territories. Although habitat that allows for dispersal may be marginal or unsuitable for nesting or roosting, it provides connectivity between blocks of nesting habitat both locally and over the Mexican spotted owl's range that is essential to demographic interaction and genetic flow. Thus, dispersal habitat includes unoccupied habitat of varying quality that may support intermittent use as a "stepping stone" between occupied areas.

Mexican spotted owls occur in relatively isolated mountain ranges, often separated by wide expanses of Sonoran, Chihuahuan, and Great Basin desert and other nonforested lands. Preliminary studies of juvenile owl dispersal in southern Utah (Willey 1993) and New Mexico (Peter Stacey, University of Nevada, Reno, *in litt.*, 1993) have shown movements across a wide variety of habitat types, including both riparian areas and vegetation types considered too open for consistent use by Mexican spotted owls. In Southern Arizona, spotted owls occur in isolated clusters separated by desert habitat. It is probable that these small clusters are not self-sustaining, but depend on immigration from other areas to maintain demographic and genetic viability.

The results of a 3-year telemetry study of owls and habitat in southern Utah indicate seasonal shifts in habitat use (van Riper and Willey 1992, Willey 1993). During the breeding season, about 25 percent of adult owl locations occurred outside of steep canyon terrain. During the fall and winter seasons, about half of the locations occurred on mesa-tops, benches, and warm slopes above the canyons. Movement out of the relatively cool canyons used in summer months to warmer areas used in winter may be related to the thermoregulatory requirements of the species. Movements out of the summer home ranges during the winter season were highly variable. A few owls moved completely out of their summer ranges, several shifted into adjacent areas with some overlap of seasonal ranges, and others remained within the same area year round.

Current Situation

Federal, State, tribal, and private lands contain habitat for the owl. Federal agencies involved include the Forest Service, Bureau of Indian Affairs (BIA), National Park Service (NPS), Bureau of Land Management (BLM), and Department of Defense. Tribes include the Navajo, San Carlos Apache, White Mountain Apache, Southern Ute, Jicarilla Apache, Hualapai, and the Mescalero Apache. Efforts to estimate habitat acreage and survey effort for owls have varied among agencies and tribes, with the most intensive work being done by the Forest Service.

Currently, land-managing agencies characterize Mexican spotted owl habitat under the term "suitable." Suitable habitat is often identified only as habitat able to sustain the combined nesting, roosting, and foraging needs of the Mexican spotted owl. The definition often excludes additional habitat used only for foraging and may underestimate the total habitat available within an owl territory and across the species' range.

Forest Service land in Arizona and New Mexico contains 1,267,000 ha (3,130,000 acres) of suitable habitat, with an additional 421,000 ha (1,040,000 acres) described as being capable of returning to suitable condition (L. Henson, Southwest Regional Forester, *in litt.*, 1993). Forest Service land in Colorado is estimated to have about 356,000 ha (880,000 acres) of forested suitable habitat. Recent estimates of suitable canyon habitat in Utah national forests is about 58,000 ha (143,000 acres) (Kate Grandison, Dixie National Forest, *in litt.*, 1994). No capable acreage figure is available for Utah and Colorado. Combining all Forest Service suitable habitat with the capable habitat in the Southwest Region (Arizona and New Mexico) yields a total of habitat acreage of 2,102,000 ha (5,193,000 acres) on Forest Service lands in the four-State area.

The Forest Service began Mexican spotted owl inventories in New Mexico and Arizona in 1988. Inventories began in Colorado in 1989, and in Utah in 1990. About 1,012,000 ha (2,500,000 acres) had been inventoried in the Forest Service Southwest Region as of the end of the 1993 survey season (USFS 1993). Utah and Colorado national forests have inventoried 354,000 ha (875,000 acres) and about 202,000 ha (500,000 acres), respectively (K. Grandison, *in litt.*, 1994).

The Southwestern Region of the Forest Service establishes areas around known owl locations, called management territories (MTs). Each MT represents the occurrence of either a single owl or pair of owls, and is based on either confirmed nest or roost locations, or nighttime calling responses. Forest Service inventories through 1993 resulted in the establishment of 740 MTs in Arizona and New Mexico (Heather Hollis, Forest Service Southwest Regional Office, pers. comm., 1994). Four MTs have been established from the six sites with owl detection records in Utah (K. Grandison, pers. comm., 1994). No MTs have been established for the six owl sites in Colorado (John Verner, Pike/San Isabel National Forests, pers. comm., 1994).

There is potentially up to 435,000 ha (1,075,000 acres) of Mexican spotted owl habitat on Indian reservations. The actual amount of habitat may be lower because estimates supplied by the BIA Forestry Division were developed from timber-type maps containing little information about understory conditions or slope. The estimates may also omit minimally forested or nonforested canyon habitat acreage. Information available to the Service on owl survey efforts on Indian lands is as follows:

- The White Mountain Apache Tribe's Mexican spotted owl conservation plan states that approximately 54 owl sites have been located on the Fort Apache Indian Reservation;

- Owl surveys on the Navajo Reservation have resulted in the confirmation of owls at 26 sites (13 pairs and 13 singles) (John Nysted, Navajo Fish and Wildlife Department, pers. comm., 1994);
- The Jicarilla and the Hualapai wildlife departments conducted owl surveys in 1993; however, no owls were detected; and
- Current owl records exist for the San Carlos and Mescalero Apache Reservations, but only limited information is available on population estimates.

A total of 297,000 ha (734,000 acres) of potential owl habitat occurs on BLM lands in Colorado, Utah, Arizona, and New Mexico (BLM, Colorado State Office, *in litt.* 1990; BLM, Utah State Office, *in litt.* 1990; BLM, New Mexico State Office, *in litt.* 1990; Ted Cordery, Arizona BLM, pers. comm., 1992). In 1993, a total of 25 owl records were known from BLM lands. There were 15 locations in Utah, 7 locations in Colorado, and 1 location in New Mexico. There are several historical records and two current records for sites on BLM lands in Arizona.

Most Mexican spotted owl habitat in national parks and monuments consists of minimally forested, steep, shaded canyons in the northern part of the owl's range. It is difficult to estimate acreage for this type of habitat. The NPS estimated that 23 parks and monuments in the Southwest contained between 96,000 and 177,000 ha (238,000 to 438,000 acres) of Mexican spotted owl habitat (NPS, Southwest Region, *in litt.* 1990; NPS, Rocky Mountain Region, *in litt.* 1990; J. Ray, NPS, Grand Canyon National Park, pers. comm., 1990). As of 1993, the NPS had records of a total of 32 sites in Utah and 2 sites in Colorado.

Between 72,000 and 82,000 ha (177,000 to 202,000 acres) of New Mexico and Arizona State lands contain forests and canyons that could be suitable Mexican spotted owl habitat. Several historical and recent records exist for New Mexico State lands. In Arizona, surveys conducted by the Arizona State Land Department and the Coconino National Forest resulted in the establishment of three MTs on Forest Service land. No information was available on suitable Mexican spotted owl habitat on State lands in Utah and Colorado. However, a single owl was recorded on Utah State lands in 1992.

Private lands in Arizona and New Mexico are currently estimated to contain up to 53,000 ha (130,000 acres) of owl habitat (U.S. Fish and Wildlife Service 1994). No estimates exist for owl habitat acreage on private lands in Colorado and Utah. This is partly due to the difficulty in assessing the extent of existing canyon habitat in the Colorado Plateau physiographic province, and partly a result of the insufficient amount of owl surveys accomplished to accurately determine the limit of the species' range.

The land-managing agencies and tribes estimate a total of 3,100,000 ha (7,666,000 acres) of suitable Mexican spotted owl habitat within the United States. These estimates of habitat availability for nesting and roosting activity are derived from median figures where estimates were given as an acreage range and include capable habitat estimates where available. The approximate proportion of Mexican spotted owl habitat in the Southwest is: Forest Service, 68 percent; Tribal, 14 percent; BLM, 10 percent; NPS, 4 percent; the States of Arizona and New Mexico, 2 percent; and private lands, 2 percent.

The percentage of habitat for each category of ownership is considered fairly accurate. However, the total acreage of owl habitat is likely overestimated. The error is a consequence of inadequate information on land status and questions about the types of vegetative communities that provide owl habitat. Several agencies expressed uncertainty about the accuracy of their habitat estimates.

The Service estimates that there is approximately 2,425,000 ha (5,988,000 acres) of owl habitat suitable for nesting and roosting. This estimate excludes most of the ponderosa pine community type because this vegetation type is not significantly used by nesting and roosting Mexican spotted owls. However, the Forest Service does consider ponderosa pine forest to be suitable habitat when it has the correct structural attributes (K.W. Fletcher, Forest Service Southwest Region, pers. comm., 1992), but the forest stand maps and inventory databases do not separate suitable from unsuitable stands in ponderosa pine. Forest Service Mexican spotted owl inventory data place approximately 50 MTs in ponderosa pine habitat, which would add about 40,000 ha (100,000 acres) to the suitable habitat base in Arizona and New Mexico (Forest Service, *in litt.* 1992).

Definition of Critical Habitat

The Service is required to base critical habitat proposals upon the best scientific and commercial data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Service may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in the extinction of the species (Section 4(b)(2) of the Act).

Critical habitat is defined in Section 3(5)(A) of the Act as: "(i) the specific areas within the geographic area occupied by a species . . . on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species." The term "conservation," as defined in Section 3(3) of the Act, means ". . . to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary," i.e., the species is recovered and can be removed from the list of endangered and threatened species.

Role in Species Conservation

Proposed designation of critical habitat includes areas subject to commercial timber harvest, the primary threat to the species. The Service considers the protections that result from the listing of the species as threatened, such as the jeopardy prohibition under section 7 and the prohibition of take under section 9 of the Act, to be adequate protection in areas where other, localized threats may be present.

The use of the term "conservation" in the definition of critical habitat indicates that its designation should identify lands that may be needed for a species' eventual recovery and delisting. However, when critical habitat is proposed or designated at the time a species is listed, the Service frequently does not know precisely what may be needed for recovery. In this regard, critical habitat serves to preserve options for a species' eventual recovery. The Service is continuing to work with the Recovery Team to determine those areas and management approaches considered necessary for the recovery and conservation of the species.

The designation of critical habitat will not, in itself, lead to recovery, but, through regulations under section 7 of the Act, may assist the Service and all Federal agencies in contributing toward the species' conservation. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements), regardless of whether they are currently

occupied by the listed species, thus alerting the public and land-managing agencies to the importance of an area in the conservation of a listed species. Critical habitat also identifies areas that may require special management considerations or protection, and provides additional protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the added protection provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Designating critical habitat does not create a management plan for a listed species. Designation does not establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), nor does it have a direct effect on areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans, management plans, and through section 7 consultation.

Critical habitat identifies specific areas essential to the conservation of a species. Areas not currently containing all of the essential features, but with the capability to do so in the future, may also be essential for the long-term recovery of the species, particularly in certain portions of its range, and may be designated as critical habitat. However, not all areas containing the features of a listed species' habitat are necessarily essential to a species' survival. Areas not included within critical habitat boundaries that contain one or more of the primary constituent elements are still important to a species' conservation and may be addressed under other facets of the Act, and other conservation laws and regulations.

The steps used to determine proposed critical habitat are summarized in the following sections on Primary Constituent Elements, and Criteria for Identifying Candidate Critical Habitat Units.

Primary Constituent Elements

In determining which areas to propose as critical habitat, the Service considers those physical and biological attributes that are essential to a species' conservation and which may require special management considerations or protection (section 3(5)(A)(i), of the Act). Such physical and biological attributes are described in 50 CFR 424.12. They include, but are not limited to, the following:

- Space for individual and population growth, and for normal behavior;
- Food, water, or other nutritional or physiological requirements;
- Cover or shelter;
- Sites for breeding, reproduction, or rearing of offspring; and
- Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements of critical habitat for the Mexican spotted owl are those areas that include, but are not limited to, the habitat components which provide or which have the potential to provide for nesting, roosting, foraging, or dispersal. Forested habitats used for nesting and roosting are typically characterized as supporting mature stand attributes including high canopy closure, multi-canopied structure, coniferous vegetation (sometimes including a hardwood understory), large diameter trees, high densities of live trees, snags and large logs. Canyon habitats for nesting and roosting are generally sparsely vegetated, steep-walled areas, often containing rock outcrops and crevices. Nesting and roosting habitat also supports owl foraging activity; however, a wider array of habitat attributes may be found in areas used solely for foraging and/or dispersal, including fairly open and non-contiguous forest, small openings, woodlands, and rocky slopes.

Areas of proposed critical habitat include both "suitable" and "unsuitable" forest habitat. Several definitions of "suitable" are currently used by different land-managing agencies; however, the term "suitable" generally refers to habitat that supports the combined activities of nesting, roosting, and foraging. In the Southwest, "suitable" habitat is often interpersed with "unsuitable" habitat that may be important for foraging. This critical habitat proposal is not limited to habitat that meets "suitable" definitions, but includes habitat with any of the primary constituent elements described above.

Criteria for Identifying Candidate Critical Habitat Units

The primary objective in proposing critical habitat is to identify existing and potential Mexican spotted owl habitat considered essential for the conservation of the species, and in need of special management considerations or protection. The Service has focused on available nesting and roosting habitat to identify locales that provide a nucleus for delineation of critical habitat units. Additional habitat was added as needed to develop units based on the criteria described below. In its proposal of critical habitat, the Service has considered all habitat types needed by the species through its definition of the primary constituent elements.

Using aerial photography, Mexican spotted owl habitat and forest type maps, and field verification, the Service identified areas to be considered for designation as critical habitat. Because habitat maps available to the Service were generally based on the varying definitions of "suitable habitat" used by the agencies, the major focus was on habitat that provides nesting, roosting, and some foraging attributes. To assist in these determinations, the Service relied upon the following principles developed by the Interagency Scientific Committee (Thomas *et al.* 1990) for the northern spotted owl, and by others working in the field of conservation biology:

—Develop and maintain large contiguous blocks of habitat to support multiple reproducing pairs of owls;
—Minimize fragmentation and edge effect to improve habitat quality;
—Minimize distance to facilitate dispersal among blocks of breeding habitat; and
—Maintain range-wide distribution of habitat to facilitate recovery.

Several qualitative criteria were considered when determining whether to select specific areas as potential critical habitat. The following discussion describes the criteria and provides an explanation of their use in selecting specific areas.

(1) *Currently Suitable Habitat:* The Service concentrated on the existence of currently suitable Mexican spotted owl forested habitat (primarily nesting and roosting, but also foraging) that contains one or more of the primary constituent elements. The Service evaluated the quality of existing habitat based on available habitat maps and delineated the best available habitat (i.e., the least fragmented, most contiguous forest habitat) in the critical habitat units.

(2) *Large Contiguous Blocks of Habitat:* The Service identified, where available, large, contiguous blocks of habitat or areas that mostly consist of Mexican spotted owl habitat. Areas were selected so that critical habitat units would include as little low-quality habitat as possible.

(3) *Dispersal Distances:* The widely-spaced nature of most Mexican spotted

owl territory clusters generally determined the distances between proposed critical habitat units. However, where a unit was developed to provide additional unoccupied habitat to enhance the probability of cluster persistence, units were oriented to minimize inter-unit distances and facilitate potential dispersal.

(4) *Occupied Habitat:* In evaluating potential critical habitat units, the Service gave primary consideration to habitat currently occupied by pairs or resident singles; however, some unoccupied areas were selected if they were important for other reasons (e.g., territory cluster contiguity and linkage). The Service may designate unoccupied areas when such areas are essential for the conservation of the species (section 3(5)(A)(ii) of the Act). Some units were selected based on habitat suitability although no surveys had yet been conducted. All areas selected, however, have potential for supporting Mexican spotted owls.

(5) *Rangewide Distribution:* The Service is proposing critical habitat units throughout the existing United States range of the Mexican spotted owl to maintain genetic variation and cluster linkage.

(6) *Special Management or Protection:* Section 3(5)(A)(i)(II) of the Act defines critical habitat as areas "which may require special management considerations or protection." The Service evaluated the need for special management in terms of the existing situation (e.g., current quality of existing habitat), the relative importance of territory clusters, or current management activities, and threats. For example, the Fort Apache Indian Reservation is managed under an uneven-age timber harvest prescription, unlike the even-age management cited as a threat to the Mexican spotted owl. The White Mountain Apache Tribe has developed a conservation strategy that the Service believes will adequately protect the Mexican spotted owl on the Fort Apache Indian Reservation. Thus, the Service has determined that additional special management consideration or protection is not needed, and the area is not proposed as critical habitat. All other areas selected are included in this proposal because of their need for special management or protection. However, the Forest Service and other Indian tribes have begun work with the Service to develop and implement conservation agreements or management plans to conduct timber harvests while providing adequate protection to the owl and its habitat.

In addition, the Service evaluated the adequacy of existing protection under the Act to determine whether critical habitat would provide a necessary incremental benefit to the species. For example, significant protection already exists under section 7 of the Act, such as the prohibition of jeopardy to the species, the minimization of project impacts through mandatory reasonable and prudent measures to minimize incidental take, etc. The Service considers commercial timber harvest to be the primary threat to the Mexican spotted owl, and thus identified areas (proposed critical habitat units) where commercial timber harvest is planned or authorized. In those areas, the designation of critical habitat can provide protection above the current protection under the Act by protecting unoccupied habitat. It is important to note, however, that other areas are essential to the species' recovery, and their exclusion from proposed critical habitat designation does not imply otherwise. Although other threats to Mexican spotted owls have been mentioned, such as oil and gas leasing, grazing, recreation, etc., the Service has been unable to find evidence that these threats are significant to the Mexican spotted owl population as a whole. Rather, these activities are best dealt with through section 7 consultation on the species.

(7) *Adequacy of Existing Regulatory Mechanisms:* The Service considered the existing legal status of areas (i.e., reserved areas such as wilderness or parks) and has not proposed reserved areas as critical habitat. In general, the current classification of wilderness areas and parks provides adequate protection against potential habitat-altering activities because they are primarily managed as natural ecosystems. These lands are often essential to the conservation of the species, as they provide important links and contain large areas of habitat in relatively pristine condition. However, these lands by themselves do not provide adequate habitat to support a viable range-wide Mexican spotted owl population. The Service considered their relative contribution to the Mexican spotted owl's conservation but generally did not include them in critical habitat because of their current classification unless they were inclusions within larger surrounding critical habitat units.

Proposed Critical Habitat Designation

The Service has identified 112 proposed critical habitat units totaling 1,931,264 ha (4,770,223 acres) in Arizona, New Mexico, Utah, and Colorado. The approximate acreage of proposed critical habitat by land ownership is shown in Table 1.

Management Considerations

Forest Practices

Management direction for lands with Mexican spotted owl habitat varies within and between Tribal governments and Federal and State agencies. A management emphasis for timber production is in effect on much of Forest Service and tribally managed land. Some BLM Mexican spotted owl habitat is managed primarily for natural resources extraction, including timber, but is still available for wildlife and recreation. National Park Service lands are managed for recreation and preservation of natural values. State lands within owl habitat are typically checkerboarded with Federal lands and are usually not large enough to support owl territories of their own. State lands are managed with similar resource management emphases as BLM land. Management emphasis on private lands providing Mexican spotted owl habitat is unknown.

TABLE 1.—CRITICAL HABITAT ACREAGE BY LAND OWNERSHIP AND STATE

	Arizona	New Mexico	Colorado	Utah	Total
Forest Service	1,510,148	1,883,332	34,500	188,386	3,616,366
Bureau of Land Management	0	10,790	562	72	11,424
National Park Service	45,892	0	0	0	45,892
Department of Defense	2,013	0	0	0	2,013
State	3,333	5,847	620	20	9,820
Tribal	401,829	499,334	61,531	0	962,694
Private	28,396	86,185	6,890	543	122,014
Total	1,991,611	2,485,488	104,103	189,021	4,770,223

TABLE 1.—CRITICAL HABITAT ACREAGE BY LAND OWNERSHIP AND STATE—Continued

	Arizona	New Mexico	Colorado	Utah	Total
Critical habitat units	38	67	7	1	*112

*One critical habitat unit overlaps two States.

Although the Forest Service is undergoing a process to change its dominant silvicultural practices to uneven age systems, its current management plans call for harvestable timberland in Arizona and New Mexico to be primarily managed under an even-aged system using shelterwood management. Commercial forests on the Navajo Indian Reservation have also been managed under shelterwood prescriptions (James Carter, BIA, pers. comm., 1990). Other commercial forests on Indian lands in the Southwest are managed primarily as uneven-aged stands by use of selective logging. Under the shelterwood system, a stand is scheduled for a series of harvests culminating in a full rotation cycle in 120 years or less. This cycle length maximizes timber production, but does not provide enough time for stands to reach the mature to old-growth conditions characteristic of forested Mexican spotted owl habitat, and results in forest age distributions unnaturally skewed toward younger stands. The conversion of complexly structured forest stands to evenaged stands was identified by the Service (USFWS 1991, USFWS 1993) as the greatest threat facing the Mexican spotted owl.

The Service has determined habitat loss trends from current National Forest plans, which provide the only available projections on timber harvest trends into the future. Half of all shelterwood management on National Forests is occurring in forests not suitable for breeding (primarily pure ponderosa pine), and the other half in suitable forest habitat. The Forest Plans project that an estimated 0.4 percent of Mexican spotted owl habitat will be made unsuitable for breeding each year in the future if timber extraction continues as outlined under current forest plans.

Uneven-aged management like that employed by the White Mountain Apache Tribe maintains and promotes development of complex forest structures. Methods include individual tree selection and group selection. Individual tree selection entails the harvest of trees selected from a size-distribution curve appropriate for forest type, site conditions, and desired regeneration levels. Trees of various size and age classes are retained, and multi-storied attributes and vertical diversity are maintained. Group selection creates openings in the forest stand up to a hectare (1 to 2 acres) in size, developing small even-aged clumps of trees and within-stand horizontal diversity. The Service considers the use of uneven-age management the silvicultural method most compatible with maintenance of Mexican spotted owl habitat.

Current Management

The States of Arizona, Utah, and Colorado list the Mexican spotted owl as a threatened species. Capture, handling, transportation, and take of Mexican spotted owls are regulated by game laws and special licenses for live wildlife. These State laws and licensing requirements regulate hunting, recreation, and scientific investigation. Habitat protection is not provided through State laws and regulations.

The Service is aware of Mexican spotted owl protection guidelines that have been developed by two Indian nations. The guidelines for the Mescalero Apache Reservation establish a 29 ha (72 acre) buffer zone around active Mexican spotted owl roost or nest sites. No management activities may occur within the buffer zone during the reproductive season. After the reproductive season, the buffer is reduced to a 46-meter (150-foot) radius encompassing 0.66 ha (1.6 acres) around significant roost areas and a 61-meter (200-foot) radius encompassing 1.17 ha (2.9 acres) around nests.

The Fort Apache Indian Reservation is managed under a conservation plan approved by the Tribal Council. This plan designates two levels of owl protection. The first level protects clusters of owls and their intervening habitat, and the second level focuses on individual owl sites. This management strategy is largely based on a landscape rather than site-by-site approach.

Most Federal agencies have policies to protect State-listed threatened or endangered species, and some agencies also protect species that are candidates for Federal listing. For instance, the NPS Organic Act protects all wildlife on national parks and monuments. However, general policies often do not include standards and guidelines to measure policy success.

Prior to listing, the Migratory Bird Treaty Act (MBTA) provided the only Federal protection for the Mexican spotted owl. Under the provisions of the MBTA, it is unlawful to pursue, hunt, take, capture, or kill in any manner any migratory bird unless permitted by regulations. Although the Mexican spotted owl typically remains in its summer range throughout the year, it is included on the list of birds protected under the MBTA.

An interagency agreement for purpose of ensuring population viability of the spotted owl (*Strix occidentalis*), including the Mexican spotted owl, was signed by the Service, BLM, NPS, and Forest Service on August 12, 1988 (U.S. Department of Interior 1988). Under this agreement, each agency agreed to manage its lands to provide owl habitat, to carry out habitat and population inventories sufficient to assess long-term trends, and to carry out research activities sufficient to provide empirical information on the validity of planning assumptions. The degree to which this agreement has been implemented has varied within and among agencies.

Specific management policies for the Mexican spotted owl have been developed by the BLM in Colorado and New Mexico. The policy in Colorado states, "In areas with a confirmed nest or roost site, surface management activities will be limited and will be determined on a case by case basis to allow as much flexibility as possible outside of the core area." Management policy in New Mexico states that habitat core areas and territories of appropriate size will be established and preserved wherever Mexican spotted owls are found.

Detailed guidelines for Mexican spotted owl management have been developed by the Forest Service Southwest Region. The guidelines were first issued as Mexican spotted owl Interim Directive (ID) No. 1 in June 1989, and reissued as Mexican spotted owl ID No. 2 in June 1990. Utah and Colorado national forests adopted ID No. 2 in 1991. The guidelines expired December 26, 1991, but the Forest Service is continuing to manage under ID No. 2. The IDs require establishment of a Mexican spotted owl MT around each nest or roost site. Each MT (except those on the Gila and Lincoln National Forests) has a core area of 182 ha (450 acres) and an overall size of 810 ha (2,000 acres). Activities within the core area are limited to road construction. Within the MT, activities, including

timber harvest, are limited to a maximum of 314 ha (775 acres). The intent of the guidelines is to retain at least 405 ha (1,000 acres) of suitable habitat within the MT after proposed management activities are identified and located. Forest Service estimates indicate that suitable habitat within MTs currently averages 466 ha (1,150 acres) for territories in New Mexico and Arizona. In Utah, MTs encompass 1,340 ha (3,350 acres) with a core of 350 ha (875 acres) (K. Grandison, pers. comm., 1994).

Application of the IDs has not been uniform on all forests. Guidelines on two forests were modified. The core area was reduced in size to 121 ha (300 acres) for the Lincoln National Forest under ID No. 1. Under ID No. 2, a core area of 182 ha (450 acres) was established for all forests but the overall territory size was reduced to 607 ha (1,500 acres) for the Lincoln and Gila National Forests. Both forests have significant Mexican spotted owl populations, which has resulted in conflicts with timber harvest plans. The ID provides no protection for unoccupied suitable Mexican spotted owl habitat, nor does it address forest activities not related to timber harvest.

The Service has examined spotted owl protective measures throughout the species' range. The management strategies employed by various agencies and tribes have been developed independently without a common overall approach. These strategies provide varying levels of protection to existing owl sites, but most do not conform to an overall, landscape recovery strategy. In addition, there has been no assessment of the adequacy of these varied approaches in promoting range-wide conservation of the Mexican spotted owl. Thus the Service has determined that the designation of critical habitat in areas subject to timber harvest will help to preserve options until a long-term, range-wide management strategy is developed and its implementation ensured.

Available Conservation Measures

Recovery Planning

The Service appointed the Team in March 1993. Since that time the Team has assembled all available data on Mexican spotted owl biology, the threats faced across the species' range, current protection afforded the species, etc. Using that information, the Team developed the Draft Mexican Spotted Owl Recovery Plan. Availability of that document will be announced in the **Federal Register**.

The Draft Mexican Spotted Owl Recovery Plan recommends a landscape management strategy that will conserve the species as population and habitat trends are assessed. If made final, the recovery plan will guide management of this species over the next 10–15 years. The Service will assess the value of critical habitat in implementing the recovery plan, and that assessment may influence the final critical habitat rulemaking.

Section 7 Consultation

Section 4(b)(8) of the Act requires, for any proposed or final regulation to designate critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies ensure their actions do not jeopardize the continued existence of any listed species. As required by 50 CFR 402.14, a Federal agency must consult with the Service if it determines an action may affect a listed species or critical habitat. Thus, the requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section 7 review to evaluate jeopardy and incidental take of the species. Regulations implementing this interagency cooperation provision of the Act are found at 50 CFR 402.

Conference on Current Activities

Section 7(a)(4) of the Act and 50 CFR 402.10 of the regulations require Federal agencies to confer with the Service on any action that is likely to result in destruction or adverse modification of proposed critical habitat. The Act requires Federal agencies to reinitiate consultation on previously reviewed actions should conditions change (e.g., if the Service designates critical habitat); consequently, some Federal agencies may request conference with the Service on actions for which formal consultation has been completed. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

If an agency requests, and the Service concurs, the Service may issue a formal conference report. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. The Service may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Examples of Proposed Actions

Areas which contain habitat used by the owl during its life cycle support a number of existing, proposed, and potential activities. Commercial activities that may affect Mexican spotted owl critical habitat include timber harvest, timber salvage harvest, other wood fiber utilization (e.g., paper, firewood), snag removal, construction of hydroelectric facilities, and construction of ski areas and resort facilities. Additional activities include "personal use" commodity production, such as fuelwood gathering and Christmas tree cutting. Activities associated with land management by involved agencies include campground and road construction, certain fire suppression activities such as fire break construction and use of chemical fire retardants; silvicultural activities such as forest pest management and stocking control; and military maneuvers. The Service recognizes that these activities may affect individual owls and portions of their habitat. However, the Service has identified the timber management program as the activity that constitutes the most significant threat to the survival of the species because of its scope across the landscape, and because it is the predominant threat to habitat in the areas with the largest owl populations. The Service believes that where there are other activities section 7 consultations on effects of projects to the species and other regulatory mechanisms provide adequate protection.

In evaluating proposed activities within critical habitat through section 7 analyses, the Service uses project descriptions and biological assessments provided by the action agency, and

focuses on the likely impacts of a project on the constituent elements of the site and surrounding areas. The Federal agencies requesting consultation can assist the Service in its evaluation of proposed actions by providing detailed information on the habitat configuration of a project area, habitat conditions of surrounding areas, and information on known locations of Mexican spotted owls.

Proposed actions would be individually examined in terms of site-specific impacts to the primary constituent elements and the reasons for which the critical habitat unit was designated. Certain proposed actions, such as the selective harvest or commercial thinning of timber stands, may or may not destroy or adversely modify critical habitat, depending on the type and extent of harvest and the pre-project condition of the site in relation to Mexican spotted owl habitat needs. Activities that disturb, remove, or retard the development of the primary constituent elements within designated critical habitat units may adversely modify the Mexican spotted owl's critical habitat. These activities may include, but are not limited to, actions that would significantly reduce the canopy closure of a timber stand, modify multi-canopy stand structure, significantly reduce the stand's average tree diameter, significantly alter tree size and age class distribution and species composition, reduce the availability of nesting structures and sites, reduce the suitability of the landscape to provide for safe movement, or reduce the abundance or availability of prey species.

In addition to site-specific analysis, Service evaluation of proposed Federal actions would also consider the additive effects of past, on-going, and proposed actions. Proposed projects within critical habitat would also be examined spatially to determine adverse modification of habitat across the surrounding landscape. The additive effects of actions in proximity to the proposed project may collectively result in the appreciable reduction of the value of a critical habitat unit. Conversely, an isolated proposed action within a spacious expanse of unmodified habitat may not adversely affect the function for which a critical habitat unit was designed.

An activity cannot cause adverse modification of critical habitat in an area that does not contain or have the potential to contain the physical and biological features comprising the primary constituent elements. Due to limitations in the fineness of the mapping effort, and the interspersed nature of suitable and unsuitable habitat types, some such areas have been incidentally included in the proposed designation as inclusions within surrounding Mexican spotted owl habitat. Furthermore, some activities may not be restricted due to critical habitat designation because there would be no effect on the primary constituent elements. However, Federal projects that do not adversely modify critical habitat may still affect Mexican spotted owls (e.g., through disturbance) and, therefore, may be subject to review under section 7 of the Act.

Some activities may be considered to be of benefit to Mexican spotted owl habitat and, therefore, would not be expected to adversely modify critical habitat. Examples of activities that could benefit critical habitat may include some protective measures such as fire suppression, prescribed burning, brush control, snag creation, and certain silvicultural activities such as thinning.

Other Conservation Measures

Section 9 of the Act prohibits intentional and non-intentional "take" of listed species and applies to all landowners regardless of whether or not their lands are within critical habitat. The term "take", as defined by the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Incidental take" is take that results from, but is not the purpose of, an otherwise lawful activity.

Section 7 and section 10(a)(1)(B) authorize the Service to allow the incidental taking of listed species through otherwise lawful activities such as timber harvesting. Biological opinions completed as part of formal section 7 consultation may authorize a set amount of incidental take associated with Federal activities. For non-Federal actions, Section 10 incidental take permit applications 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. A key element of the Service's review of a conservation plan is a determination of the plan's effect upon the long-term conservation of the species. A conservation plan would be approved and a section 10(a) permit issued if it would minimize and mitigate the impacts of the taking and would not appreciably reduce the likelihood of the survival and recovery of that species in the wild.

The Service expects limited Federal involvement for projects on non-Federal lands and few formal section 7 consultations on non-Federal lands that are included in proposed critical habitat. For those areas of non-Federal land within proposed critical habitat, section 7 would apply only for actions that are funded, authorized, or carried out by a Federal agency. The States and private individuals are still subject to the "take" prohibitions under section 9 of the Act, however, and may enter into the section 10 conservation planning process where appropriate.

Economic Analysis

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. The Secretary may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat. The exclusion of such areas from critical habitat may not occur when it is determined such exclusion may result in the extinction of the species concerned. An economic analysis is currently being prepared. The Service intends to make the economic analysis available for public review and comment, and notice of its availability will be published in the Federal Register and local newspapers.

Public Comments Solicited

The Service intends that any final rule resulting from this proposal will be as accurate and effective as possible. Therefore, comments or suggestions from the public, governmental agencies, Indian nations, the scientific community, industry, and any other interested parties concerning this proposed rule are hereby sought. Comments are particularly sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Specific information on the amount and distribution of Mexican spotted owl habitat, and the number of owls and distribution by landowner and land designation;

(3) Specific information on the ability or values of proposed areas to support other listed, proposed, or candidate species and the relation of this proposal to maintaining biodiversity and ecosystem integrity;

(4) Current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat;

(6) Economic values associated with benefits of designating critical habitat for the Mexican spotted owl. Such benefits include those derived from non-consumptive uses, e.g., hiking, camping, bird-watching; enhanced watershed protection; improved air quality; increased soil retention; "existence values", and reductions in administrative costs; and

(7) The methodology the Service might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Comments received during the 60-day comment period on this proposed rule will be considered during preparation of a final rulemaking. The final decision on the designation of critical habitat will take into consideration the comments and any additional information received by the Service.

Public Hearings

Section 4(b)(5)(E) of the Act provides for a public hearing on this proposal, if requested within 45 days of the date of publication of the proposal. As indicated under **DATES**, the Service will schedule public hearings on this proposal due to the anticipated number of requests for such hearings.

Parties wishing to make statements for the record should bring copies of their statements to the hearing. Oral statements may be limited in length, if necessary. There are no limits to the length of a written statement presented at the hearing or subsequently submitted for the record. Written comments will be accepted from any party until the close of the comment period (see **DATES**). Written submissions will be given the same weight and consideration as oral comments presented at any hearing.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, 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. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This document has been reviewed by the Office of Management and Budget under Executive Order 12866. Based on the information discussed in this rule concerning public projects and private activities within proposed critical habitat areas, it is not clear whether significant economic impacts will result from the critical habitat designation. There are a limited number of actions on private lands that have Federal involvement through funds or permits that may be affected by critical habitat designation. A final determination of the impacts of the proposal is not possible until the required economic analysis is completed. The final rule will contain determinations of the effects of the proposed actions in compliance with all relevant laws, regulations, and Executive Orders. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this proposed designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the New Mexico Ecological Services State Office (see **ADDRESSES** above).

Author(s)

The primary authors of this proposed rule are Marcos Gorresen and Sonja Jahrsdoerfer (see **ADDRESSES**.)

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the "Critical Habitat" entry for "Owl, Mexican spotted," under Birds, to read "§ 17.95(b)" instead of "NA".

3. Section 17.95(b) is amended by adding critical habitat of the Mexican spotted owl (*Strix occidentalis lucida*), in alphabetical order (following the entry for EVERGLADE SNAIL KITE and preceding the entry for PALILA), reading as follows:

§ 17.95 Critical habitat—fish and wildlife.

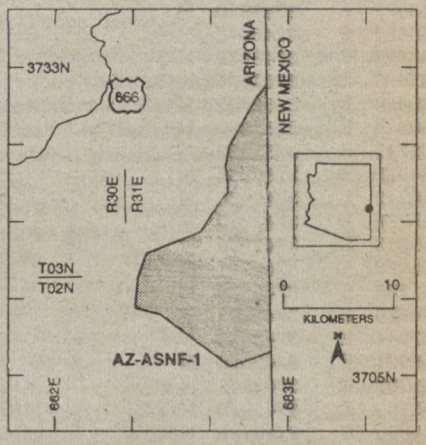
* * * * *

(b) * * *

Mexican Spotted Owl (*Strix occidentalis lucida*)

BILLING CODE 4310–55–P





BILLING CODE 4310–55–C

AZ–ASNF–1. From Bureau of Land Management maps: Nutrioso 1981, Clifton 1986. The perimeter of critical habitat unit AZ–ASNF–1 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

681051 E 3731419 N

following Arizona/New Mexico state line southerly to

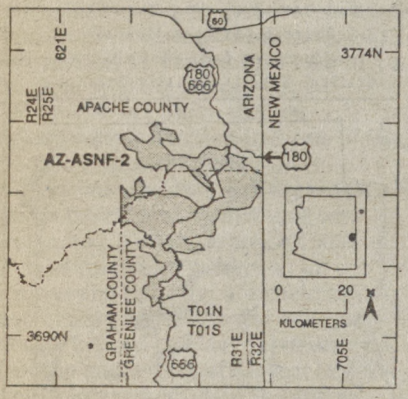
681495 E 3707131 N

continuing to

677783 E 3705800 N
671541 E 3710523 N
669198 E 3711150 N
669435 E 3713944 N
670199 E 3716135 N
675165 E 3718090 N
677641 E 3721888 N

677316 E 3724015 N
677631 E 3725816 N
680104 E 3730230 N
to closure at starting point
681051 E 3731419 N

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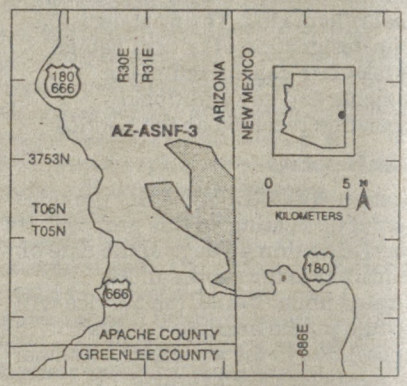


BILLING CODE 4310–55–C

AZ–ASNF–2. From Bureau of Land Management maps: Nutrioso 1981, Clifton 1986. The perimeter of critical habitat unit AZ–ASNF–2 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

639214 E 3749106 N
642179 E 3749878 N
645077 E 3747570 N
646687 E 3746842 N
648824 E 3748876 N
647673 E 3751291 N
649459 E 3752872 N
650824 E 3752867 N
651211 E 3751025 N
654982 E 3750550 N
656312 E 3747486 N
655236 E 3747262 N
652013 E 3747746 N
651420 E 3748351 N
651195 E 3746889 N
654376 E 3743391 N
657944 E 3743429 N
659991 E 3742676 N
661790 E 3742563 N
662869 E 3743970 N
665020 E 3745825 N
667435 E 3745415 N
669014 E 3744822 N
670283 E 3745982 N
670810 E 3745951 N
671244 E 3743995 N
674428 E 3742835 N
676432 E 3742513 N
675001 E 3741445 N
675743 E 3740486 N
676609 E 3740440 N
677731 E 3739776 N
678582 E 3738696 N
680944 E 3737931 N
following Arizona/New Mexico state line southerly to
681013 E 3733458 N
continuing to
679464 E 3734541 N
680305 E 3732752 N
678775 E 3730665 N
677546 E 3728106 N
674034 E 3727288 N
671656 E 3727420 N
668866 E 3727132 N
667962 E 3724783 N
666870 E 3723259 N
667393 E 3721292 N
667035 E 3719815 N
666153 E 3719402 N
663772 E 3719700 N
658281 E 3718204 N
658847 E 3717564 N
662849 E 3717143 N
664072 E 3715468 N
662059 E 3715429 N
659601 E 3714377 N
655718 E 3714964 N
655822 E 3712485 N
656976 E 3711057 N
656069 E 3709334 N
656343 E 3707794 N
658159 E 3706659 N
658013 E 3704701 N
659490 E 3703114 N
658179 E 3702109 N
655070 E 3701666 N
652153 E 3700510 N
651498 E 3701202 N
650278 E 3699517 N
649069 E 3698788 N
648455 E 3701359 N
646212 E 3702714 N
646353 E 3704471 N
647862 E 3705369 N
647748 E 3707584 N
649714 E 3707609 N
652851 E 3709839 N
652318 E 3711485 N
650282 E 3711668 N
648510 E 3714360 N
645267 E 3715035 N
following Bear Wallow Wilderness boundary Northerly and westerly to
639601 E 3722385 N
following San Carlos Indian Reservation/Fort Apache Indian Reservation and Apache-Sitgreaves National Forest boundary northerly to
639432 E 3734282 N
continuing to
641330 E 3732466 N
642070 E 3731309 N
642976 E 3731437 N
643724 E 3732036 N
643563 E 3735258 N
645229 E 3736810 N
646428 E 3734075 N
645026 E 3732104 N
650329 E 3732547 N
651277 E 3731815 N
656036 E 3731960 N
659171 E 3730782 N
662219 E 3728181 N
664658 E 3728125 N
666802 E 3730143 N
668342 E 3730795 N
669719 E 3730929 N
667147 E 3738221 N
666111 E 3740438 N
665857 E 3742187 N
663884 E 3741550 N
662970 E 3739537 N
662077 E 3739099 N
664115 E 3737321 N
663936 E 3736449 N
665674 E 3735320 N
666376 E 3732465 N
660952 E 3736942 N
658668 E 3740059 N
657053 E 3740614 N
655354 E 3740265 N
652697 E 3737861 N
652607 E 3740274 N
650700 E 3739798 N
649747 E 3738511 N
648720 E 3739843 N
646778 E 3739757 N
645317 E 3740388 N
644110 E 3742249 N
643992 E 3744258 N
641076 E 3745004 N
639222 E 3747917 N
to closure at starting point
639214 E 3749106 N

BILLING CODE 4310–55–NR

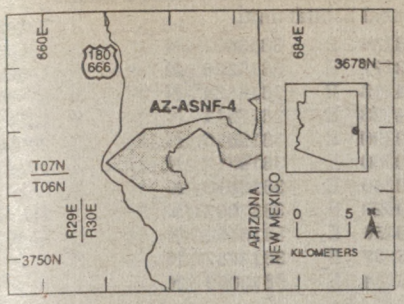


BILLING CODE 4310–55–C

AZ–ASNF–3. From Bureau of Land Management map: Nutrioso 1981. The perimeter of critical habitat unit AZ–ASNF–3 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

680677 E 3751624 N
following Arizona/New Mexico state line southerly to
680860 E 3742985 N
continuing to
679015 E 3743738 N
680408 E 3744654 N
680105 E 3745776 N
676812 E 3747711 N
674522 E 3749363 N
673965 E 3751137 N
675971 E 3751301 N
677378 E 3749014 N
677415 E 3752229 N
675447 E 3754140 N
676520 E 3754494 N
678912 E 3753965 N
679527 E 3752800 N
to closure at starting point
680677 E 3751624 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–ASNF–4. From Bureau of Land Management maps: Nutrioso 1981, Springerville 1981. The perimeter of critical habitat unit AZ–ASNF–4 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

680425 E 3765075 N

following Arizona/New Mexico state line southerly to

680539 E 3759491 N

continuing to

677965 E 3758327 N
676775 E 3758898 N
676417 E 3760481 N
674827 E 3761971 N
672634 E 3760389 N

following Escudilla Wilderness boundary southerly to

672978 E 3756035 N

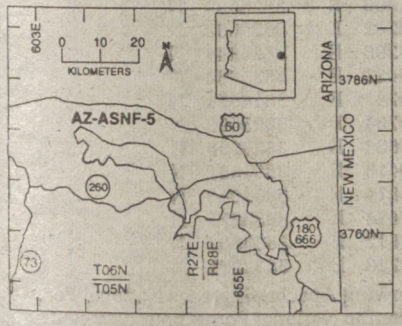
continuing to

669499 E 3756265 N
665987 E 3758854 N
669745 E 3761995 N
672424 E 3762163 N
675033 E 3762935 N
677247 E 3763171 N
677421 E 3762403 N
679707 E 3760920 N
680079 E 3762566 N
680064 E 3763961 N
679303 E 3764647 N

to closure at starting point

680425 E 3765075 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

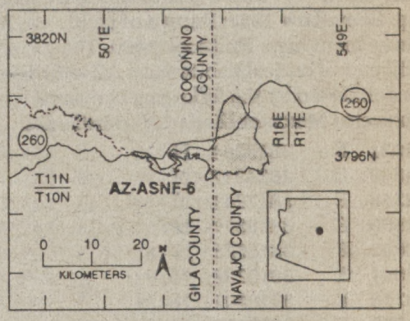
AZ–ASNF–5. From Bureau of Land Management maps: Nutrioso 1981, Springerville 1981. The perimeter of critical habitat unit AZ–ASNF–5 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

616256 E 3777733 N
615405 E 3778457 N
615950 E 3780357 N
616710 E 3781189 N
616920 E 3782257 N
615622 E 3783522 N
614218 E 3782577 N
613286 E 3785489 N
614820 E 3787177 N
618199 E 3785692 N
620695 E 3783685 N
623119 E 3782739 N
625388 E 3782312 N
627023 E 3783070 N
630161 E 3783030 N
632551 E 3782737 N
637364 E 3779360 N
638667 E 3775888 N
639374 E 3772902 N
639930 E 3772723 N
639566 E 3771860 N
641281 E 3768498 N
641905 E 3765728 N
641792 E 3764432 N
641804 E 3763631 N
641504 E 3763624 N
641521 E 3762823 N
642877 E 3762841 N
642981 E 3764690 N
643758 E 3764833 N
645650 E 3766066 N
645500 E 3769835 N
646675 E 3771161 N
651680 E 3769281 N
653095 E 3771307 N
657852 E 3768249 N
657409 E 3765581 N
660453 E 3763710 N
661036 E 3761888 N
661101 E 3758901 N
662944 E 3755903 N
662330 E 3754593 N
664976 E 3753701 N
665578 E 3756196 N
667203 E 3756216 N
667350 E 3755003 N
667814 E 3753820 N
668573 E 3751460 N
664751 E 3749599 N
663935 E 3750032 N
663751 E 3751159 N
664071 E 3752242 N
660131 E 3754524 N
659584 E 3756115 N
656736 E 3755237 N
655148 E 3755563 N
654920 E 3756764 N
658234 E 3759654 N
657105 E 3760866 N
655348 E 3761753 N
655446 E 3764697 N
653232 E 3764049 N
653830 E 3768226 N
651837 E 3767879 N
650924 E 3767042 N
651328 E 3765807 N
650409 E 3763637 N
647191 E 3763648 N
646544 E 3764351 N
645205 E 3764490 N
644306 E 3763786 N
643906 E 3758928 N
642095 E 3759835 N
639854 E 3759525 N
638873 E 3758711 N
639697 E 3760647 N
641168 E 3762492 N
641292 E 3764167 N
637780 E 3765976 N
637398 E 3767238 N
638336 E 3769354 N
634456 E 3773473 N
633843 E 3776296 N
631225 E 3776524 N
627207 E 3777429 N
624186 E 3777225 N

following Apache-Sitgreaves National Forest/Fort Apache Indian Reservation boundary westerly, to closure at starting point

616256 E 3777733 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

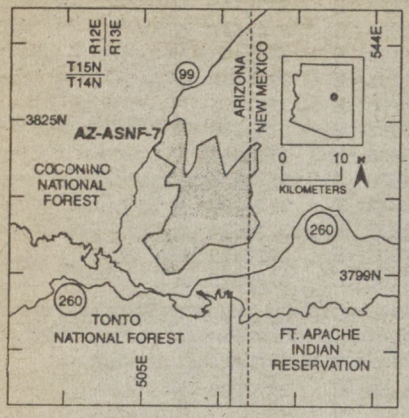
AZ–ASNF–6. From U.S. Geological Survey map: Shop Low 1981. The perimeter of critical habitat unit AZ–ASNF–6 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

506824 E 3796307 N
507091 E 3796651 N
509805 E 3796232 N
511256 E 3794866 N
512428 E 3792995 N
513907 E 3793211 N
515573 E 3794253 N
514106 E 3795424 N
513936 E 3796051 N
514918 E 3797122 N
516683 E 3796314 N
518219 E 3797498 N
520240 E 3797326 N
522082 E 3796703 N
523475 E 3798437 N
523475 E 3798437 N
524173 E 3803336 N
525329 E 3806686 N
527239 E 3807978 N
528926 E 3806664 N
529813 E 3804209 N
532085 E 3802350 N
533926 E 3795835 N
543242 E 3793975 N

following Apache-Sitgreaves National Forest/Fort Apache Indian Reservation and Apache-Sitgreaves National Forest/Tonto National Forest boundary westerly, to closure at starting point

506824 E 3796307 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–ASNF–7. From U.S. Geological Survey map: Show Low 1981; Bureau of Land Management map: Holbrook 1980. The perimeter of critical habitat unit AZ–ASNF–7 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

511031	E	3825384	N
511838	E	3824947	N
512348	E	3822241	N
511860	E	3816877	N
512090	E	3815521	N
513091	E	3816794	N
513778	E	3818301	N
514053	E	3820688	N
517145	E	3822455	N
518770	E	3815716	N
522838	E	3820503	N
524016	E	3821404	N
524803	E	3820902	N
524134	E	3820125	N
524265	E	3816780	N
522847	E	3815231	N
523406	E	3812600	N
522841	E	3811110	N
524714	E	3807732	N
523041	E	3804336	N
519999	E	3803563	N
516393	E	3804114	N
514262	E	3802586	N
511193	E	3799167	N
509127	E	3798828	N
505049	E	3804584	N
505965	E	3805669	N
508184	E	3805991	N
508907	E	3807809	N
509925	E	3809260	N
509903	E	3810337	N
510894	E	3811999	N
511112	E	3814127	N
508918	E	3813888	N
508906	E	3815107	N
510304	E	3817183	N
507109	E	3819212	N
506799	E	3820522	N
507674	E	3821245	N
508254	E	3822482	N
508402	E	3823808	N
509672	E	3824807	N

to closure at starting point

511031	E	3825384	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–ASNF–8. From U.S. Geological Survey maps: Show Low 1981, Payson 1981; Bureau of Land Management maps: Holbrook 1980, Sedona 1980. The perimeter of critical habitat unit AZ–ASNF–8 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

498071	E	3831811	N
497133	E	3830184	N
496542	E	3827744	N
495035	E	3824715	N
495427	E	3822657	N
496795	E	3824498	N
497649	E	3826338	N
501569	E	3830272	N
501669	E	3831476	N
500665	E	3832828	N
503711	E	3831746	N
506230	E	3829593	N
504999	E	3827605	N
503176	E	3827524	N
501267	E	3826550	N
500985	E	3824323	N
501825	E	3822159	N
502378	E	3821427	N
501633	E	3818559	N
502934	E	3816845	N
504033	E	3816425	N
503955	E	3813214	N
502946	E	3813430	N
501176	E	3809595	N
498831	E	3808847	N
499135	E	3806333	N
498842	E	3805166	N
498001	E	3803969	N
499702	E	3802620	N
502239	E	3800153	N
503998	E	3798072	N
505154	E	3798058	N
506119	E	3796457	N

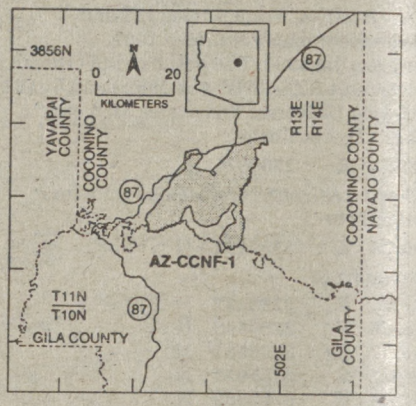
following Apache-Sitgreaves National Forest/Tonto National Forest and Apache-Sitgreaves National Forest/Coconino National Forest boundary westerly and northerly, to closure at starting point

498071	E	3831811	N

The following Universal Transverse Mercator coordinates delineate an area within AZ–ASNF–8 excluded from the critical habitat unit:

493134	E	3813062	N
493177	E	3815226	N
494113	E	3816834	N
494023	E	3817911	N
499290	E	3819810	N
500000	E	3819217	N
500240	E	3818610	N
499920	E	3817097	N
499458	E	3816160	N
495737	E	3813787	N
493134	E	3813062	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–CCNF–1. From U.S. Geological Survey map: Payson 1981; Bureau of Land Management map: Sedona 1980. The perimeter of critical habitat unit AZ–CCNF–1 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

467656	E	3810849	N
466774	E	3812091	N
467265	E	3813631	N
468965	E	3815239	N
470916	E	3818190	N
471469	E	3819546	N
472899	E	3820815	N
472989	E	3821951	N
473536	E	3822831	N
477135	E	3825608	N
476711	E	3827006	N
476981	E	3829803	N
480121	E	3830569	N
481408	E	3828599	N
479202	E	3825662	N
483296	E	3824844	N
484429	E	3823660	N
484747	E	3824551	N
483764	E	3825090	N
487663	E	3828788	N
489418	E	3831581	N
491814	E	3832043	N
493424	E	3832975	N
497812	E	3833882	N
498220	E	3832071	N

following Apache-Sitgreave National Forest/Coconino National Forest boundary southerly to

487638	E	3804964	N

continuing to

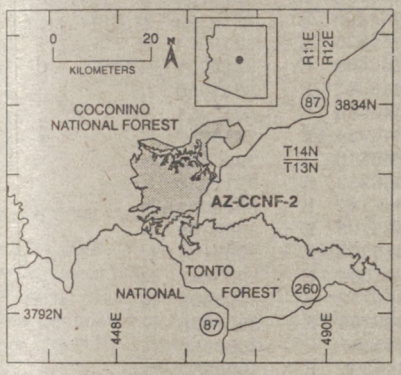
486079	E	3807551	N
488010	E	3810566	N
490129	E	3811716	N

489079 E 3814309 N
490370 E 3815953 N
489296 E 3816671 N
488083 E 3814453 N
486671 E 3813623 N
485449 E 3811207 N
484399 E 3810970 N
482659 E 3810343 N
481104 E 3810793 N
479433 E 3811999 N
478334 E 3815840 N
477042 E 3814911 N
475614 E 3811134 N

following Coconino National Forest/Tonto National Forest boundary westerly, to closure at starting point

467656 E 3810849 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ-CCNF–2. From U.S. Geological Survey map: Payson 1981; Bureau of Land Management map: Sedona 1980. The perimeter of critical habitat unit AZ-CCNF–2 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

452196 E 3826663 N
455413 E 3827141 N
457307 E 3826192 N
459859 E 3825274 N
461266 E 3825474 N
462756 E 3826273 N
463058 E 3828077 N
466081 E 3830265 N
469986 E 3830843 N
470540 E 3829472 N
472317 E 3830342 N
473546 E 3828472 N
472773 E 3825971 N
470980 E 3824898 N
469562 E 3826431 N
469504 E 3827305 N
467090 E 3827440 N
466010 E 3826094 N
466269 E 3822885 N
467812 E 3821561 N
467575 E 3820502 N
468102 E 3819548 N
466845 E 3818428 N
466215 E 3817267 N
465983 E 3816498 N
464948 E 3815529 N
464217 E 3809075 N

following Coconino National Forest/Tonto National Forest boundary southerly to

464542 E 3806101 N

continuing to

462822 E 3805626 N
461447 E 3807352 N
461014 E 3808205 N

following Coconino National Forest/Tonto National Forest boundary northerly, southerly and westerly to

455175 E 3809733 N

continuing to

455350 E 3811266 N
453666 E 3810250 N
452652 E 3810873 N

following Fossil Creek Wilderness boundary northerly to

451932 E 3816971 N

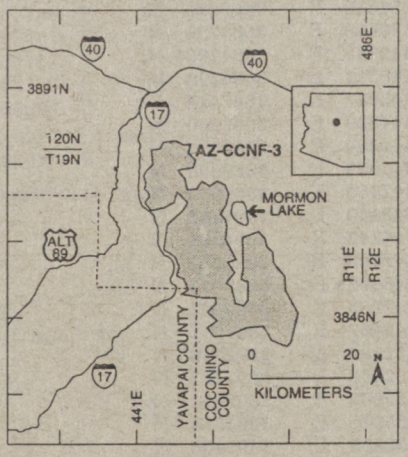
continuing to

450754 E 3819052 N
452343 E 3819762 N
451035 E 3821333 N
450670 E 3822886 N

following Clear Creek Wilderness boundary easterly and westerly, to closure at starting point

452196 E 3826663 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

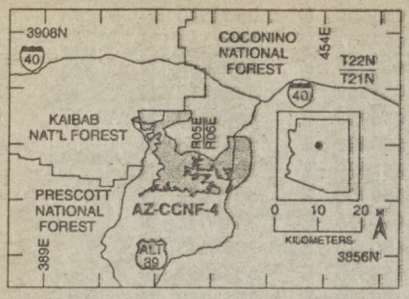
AZ-CCNF–3. From Bureau of Land Management maps: Sedona 1980, Flagstaff 1982. The perimeter of critical habitat unit AZ-CCNF–3 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

445243 E 3881912 N
446844 E 3881049 N
448293 E 3881155 N
447886 E 3879379 N
449375 E 3877848 N
448861 E 3876329 N
445705 E 3875776 N
447142 E 3874006 N
447638 E 3871685 N
449551 E 3871805 N
450685 E 3873407 N
452312 E 3872409 N
453781 E 3873481 N
455508 E 3872635 N
456289 E 3870804 N
455807 E 3868602 N
454568 E 3866608 N
455557 E 3865528 N
455863 E 3864031 N
455602 E 3861320 N
457831 E 3857143 N
456095 E 3856550 N
457552 E 3854418 N
455793 E 3852249 N
456892 E 3851395 N
457679 E 3847969 N
459466 E 3847434 N
460298 E 3848641 N
460369 E 3852445 N
458916 E 3852969 N
459339 E 3855280 N
459176 E 3861734 N
462532 E 3862959 N
463927 E 3861538 N
464367 E 3859725 N
465539 E 3858693 N
465800 E 3856376 N
468117 E 3853629 N
468343 E 3850615 N
470919 E 3845756 N
469469 E 3839892 N
468556 E 3838842 N
465200 E 3840258 N
464454 E 3841845 N
463473 E 3843118 N
460130 E 3842871 N
456481 E 3841314 N
453247 E 3841042 N
451729 E 3842870 N
453836 E 3844303 N
451873 E 3846132 N
453540 E 3847909 N
453549 E 3849106 N
450853 E 3849130 N
446346 E 3849918 N
447831 E 3850801 N
446909 E 3853131 N
445397 E 3853724 N
445878 E 3855720 N
444988 E 3857744 N
442660 E 3859279 N
443493 E 3864522 N
446792 E 3867451 N
447730 E 3869055 N
445475 E 3871235 N
444843 E 3868998 N
442788 E 3867966 N
440073 E 3867421 N
438747 E 3869007 N
439668 E 3870270 N
439442 E 3871193 N
438650 E 3871939 N
438955 E 3873049 N
438436 E 3874466 N
438974 E 3875593 N
440444 E 3876986 N
440061 E 3880010 N
441902 E 3880273 N
442652 E 3881614 N

to closure at starting point

445243 E 3881912 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–CCNF–4. From Bureau of Land Management maps: Sedona 1980, Flagstaff 1982. The perimeter of critical habitat unit AZ-CCNF–4 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

411162 E 3888459 N
411436 E 3887183 N
413255 E 3886692 N
416682 E 3887651 N
416957 E 3889749 N

following Navajo Army Depot/Coconino National Forest boundary southerly to

423289 E 3889855 N

continuing to

423315 E 3888691 N
422594 E 3887402 N
420066 E 3887145 N
416780 E 3885570 N
417568 E 3884754 N
417380 E 3884099 N
419482 E 3882976 N
419948 E 3881692 N
419576 E 3880489 N
421248 E 3879441 N
422023 E 3880178 N
424066 E 3880374 N
426737 E 3879281 N
428858 E 3878020 N
429990 E 3879762 N
432171 E 3881363 N
431766 E 3883902 N
435940 E 3883827 N
437117 E 3882604 N
437462 E 3878844 N
436914 E 3875266 N
435942 E 3873707 N
433779 E 3871900 N
431540 E 3870725 N

following Red Rocks Secret Mountain Wilderness northerly and westerly to

411269 E 3869688 N

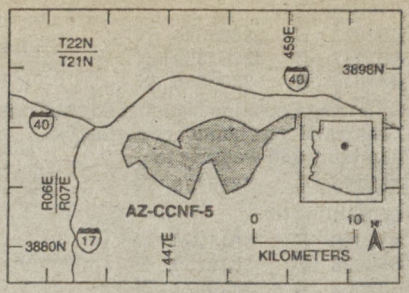
continuing to

411226 E 3869730 N

following Sycamore Canyon Wilderness boundary northerly, to closure at starting point

411162 E 3888459 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

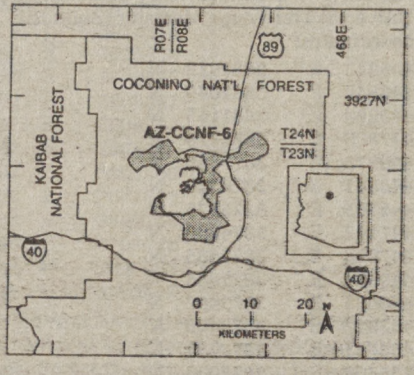
AZ–CCNF–5. From Bureau of Land Management map: Flagstaff 1982. The perimeter of critical habitat unit AZ–CCNF–5 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

459734 E 3893409 N
459673 E 3892086 N
458517 E 3891427 N
457572 E 3891550 N
456473 E 3890074 N
456504 E 3889161 N
454831 E 3886326 N
452865 E 3885379 N
452214 E 3886755 N
451330 E 3888854 N
450408 E 3888256 N
449146 E 3884792 N
446511 E 3886238 N
445087 E 3887424 N
444939 E 3887906 N
444254 E 3888681 N
443059 E 3887998 N
442450 E 3889563 N
443140 E 3891166 N
444243 E 3891381 N
447046 E 3890517 N
448367 E 3889911 N
447995 E 3890893 N
448487 E 3891612 N
451084 E 3892786 N
452448 E 3893121 N
453948 E 3892651 N
455915 E 3891574 N
458865 E 3893408 N

to closure at starting point

459734 E 3893409 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

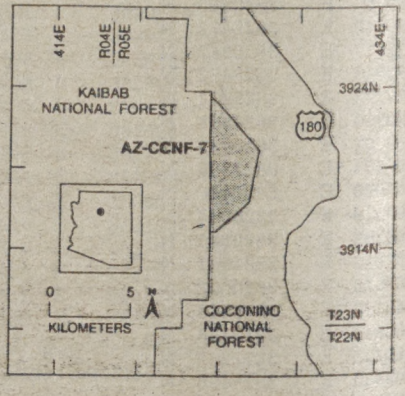
AZ–CCNF–6. From Bureau of Land Management map: Flagstaff 1982. The perimeter of critical habitat unit AZ–CCNF–6 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

435028 E 3912773 N
434479 E 3913983 N
433341 E 3914482 N
431996 E 3914225 N
430852 E 3913150 N
429612 E 3914508 N
429210 E 3915457 N
430241 E 3916816 N
432363 E 3916770 N
435256 E 3918748 N
438463 E 3916505 N
440939 E 3917584 N
445460 E 3916645 N
446951 E 3916176 N
449588 E 3917258 N
449831 E 3918414 N
450708 E 3919386 N
452448 E 3920670 N
453945 E 3919764 N
454998 E 3918375 N
454735 E 3916974 N
452409 E 3915721 N
448841 E 3915030 N
446665 E 3915461 N
444784 E 3913757 N
446540 E 3912330 N
446253 E 3911251 N
447142 E 3910071 N
445708 E 3909383 N
445563 E 3906164 N
448064 E 3903642 N
445712 E 3902893 N
445185 E 3901438 N
445127 E 3900357 N
444391 E 3900357 N
441720 E 3900757 N
439591 E 3900772 N
439717 E 3903502 N
437343 E 3905240 N
435318 E 3905461 N
434158 E 3905476 N
433598 E 3905563 N
434423 E 3908300 N
435620 E 3909150 N
436254 E 3908992 N

following Kachina Peaks Wilderness boundary, to closure at starting point

435028 E 3912773 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–CCNF–7. From Bureau of Land Management map: Flagstaff 1982. The perimeter of critical habitat unit AZ-CCNF–

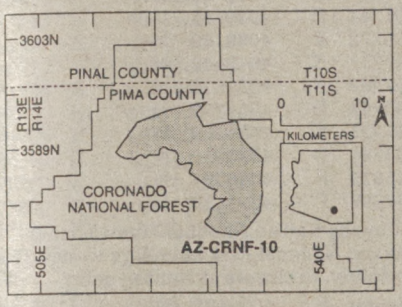
7 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

423447 E 3923447 N
423966 E 3923012 N
426475 E 3920186 N
425869 E 3916958 N
423790 E 3915112 N
423490 E 3915152 N

following Coconino National Forest/Kaibab National Forest boundary northerly, to closure at starting point

423447 E 3923447 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

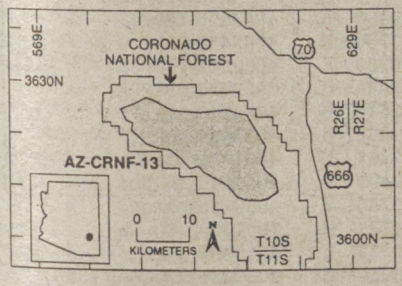
AZ–CRNF–10. From Bureau of Land Management map: Tucson 1990. The perimeter of critical habitat unit AZ–CRNF–10 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

514720 E 3588478 N
517406 E 3592224 N
521443 E 3593754 N
525972 E 3594746 N
524725 E 3593327 N
525612 E 3591646 N
529708 E 3592347 N
530274 E 3590233 N
531194 E 3589130 N
532946 E 3587566 N
532710 E 3584774 N
532877 E 3583185 N
532555 E 3580921 N
530900 E 3578861 N
529826 E 3577993 N
527068 E 3578404 N
525820 E 3579410 N

following Pusch Ridge Wilderness boundary northerly and westerly, to closure at starting point

514720 E 3588478 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

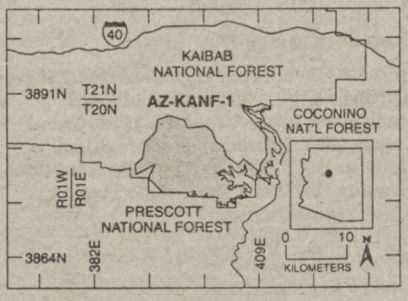
AZ–CRNF–13. From Bureau of Land Management maps: Safford 1973, Mammoth 1986. The perimeter of critical habitat unit AZ–CRNF–13 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

590057 E 3627151 N
591756 E 3626497 N
595044 E 3624654 N
600186 E 3624284 N
605383 E 3624819 N
607357 E 3624057 N
609047 E 3623746 N
612568 E 3617718 N
611712 E 3614673 N
612512 E 3613234 N
614484 E 3611466 N
614853 E 3609054 N
612871 E 3607735 N
611623 E 3607421 N
608687 E 3607524 N
607095 E 3608184 N
605255 E 3610406 N
600901 E 3612880 N
599856 E 3614090 N
598289 E 3613576 N
596460 E 3615603 N
594635 E 3617134 N
592085 E 3617511 N
590035 E 3618287 N
587186 E 3620872 N
587461 E 3622254 N
586187 E 3622768 N
585169 E 3624946 N
588094 E 3626103 N

to closure at starting point

590057 E 3627151 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–KANF–1. From U.S. Geological Survey map: Williams 1983. Bureau of Land Management maps: Flagstaff 1982,Prescott 1981. The perimeter of critical habitat unit AZ–KANF–1 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

393244 E 3874603 N
390878 E 3877037 N
391959 E 3879302 N
388817 E 3877612 N
388723 E 3879279 N
389856 E 3880231 N
390296 E 3882856 N
392046 E 3884681 N
392442 E 3886669 N
394341 E 3887323 N
396798 E 3886537 N
397322 E 3885259 N
400238 E 3885629 N
401329 E 3884831 N
402063 E 3882963 N
403192 E 3882132 N
403667 E 3880646 N
405611 E 3879116 N
406536 E 3880126 N
409130 E 3878019 N
409336 E 3879301 N
410343 E 3880607 N
410179 E 3882883 N
410329 E 3883885 N
406430 E 3888239 N
406180 E 3889105 N
407963 E 3888660 N
409434 E 3889268 N
411007 E 3888733 N

following Sycamore Canyon Wilderness boundary southerly and westerly to

402127 E 3872864 N

following Kaibab National Forest/Prescott National Forest boundary northerly and westerly to

400284 E 3873826 N

following Sycamore Canyon Wilderness boundary northerly, westerly and southerly to

399925 E 3873841 N

following Kaibab National Forest/Prescott National Forest boundary westerly to

399214 E 3873871 N

following Sycamore Canyon Wilderness boundary northerly, westerly and southerly to

398265 E 3873932 N

following Kaibab National Forest/Prescott National Forest boundary to

397474 E 3874002 N

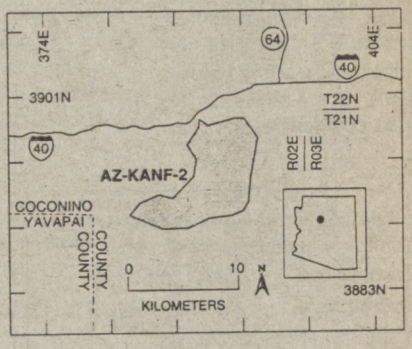
following Sycamore Canyon Wilderness boundary northerly to

397346 E 3874205 N

following Kaibab National Forest/Prescott National Forest boundary westerly, to closure at starting point

393244 E 3874603 N

BILLING CODE 4310–55–P



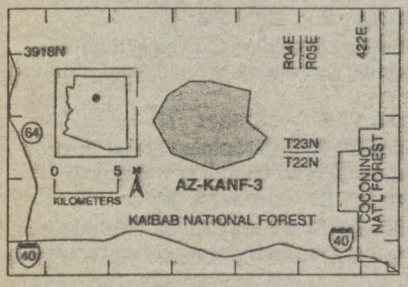
BILLING CODE 4310–55–C

AZ–KANF–2. From U.S. Geological Survey map: Williams 1983. The perimeter of critical habitat unit AZ–KANF–2 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

391337 E 3898885 N
392197 E 3898866 N
393469 E 3897059 N

392786 E 3893444 N
392561 E 3891157 N
392089 E 3890335 N
391012 E 3889902 N
389037 E 3889687 N
387093 E 3888770 N
384827 E 3888706 N
381768 E 3890009 N
382694 E 3891151 N
384517 E 3891866 N
385717 E 3891535 N
387591 E 3893519 N
387860 E 3895106 N
387037 E 3896445 N
388106 E 3898035 N
388192 E 3898783 N
388945 E 3898230 N
to closure at starting point
391337 E 3898885 N

BILLING CODE 4310–55–P

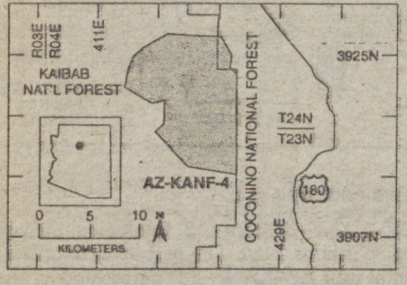


BILLING CODE 4310–55–C

AZ–KANF–3. From U.S. Geological Survey map: Williams 1983, Bureau of Land Management map: Flagstaff 1982. The perimeter of critical habitat unit AZ–KANF–3 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

408401 E 3914757 N
410056 E 3914738 N
413186 E 3913953 N
412899 E 3911497 N
414512 E 3910270 N
413325 E 3908617 N
410384 E 3907681 N
407007 E 3908927 N
405528 E 3911560 N
406663 E 3913649 N
to closure at starting point
408401 E 3914757 N

BILLING CODE 4310–55–P

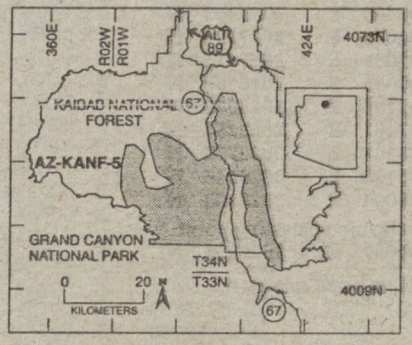


BILLING CODE 4310–55–C

AZ–KANF–4. From Bureau of Land Management map: Flagstaff 1982. The perimeter of critical habitat unit AZ–KANF–4 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

423490 E 3915152 N
419476 E 3915782 N
416778 E 3918671 N
417490 E 3919313 N
417519 E 3921286 N
416499 E 3921001 N
414217 E 3922320 N
414536 E 3923959 N
414978 E 3924928 N
415767 E 3925613 N
417733 E 3926720 N
419623 E 3926585 N
422156 E 3926511 N
423026 E 3924940 N
422859 E 3923967 N
423447 E 3923447 N
following Kaibab National Forest/Coconino National Forest boundary southerly, to closure at starting point
423490 E 3915152 N

BILLING CODE 4310–55–P

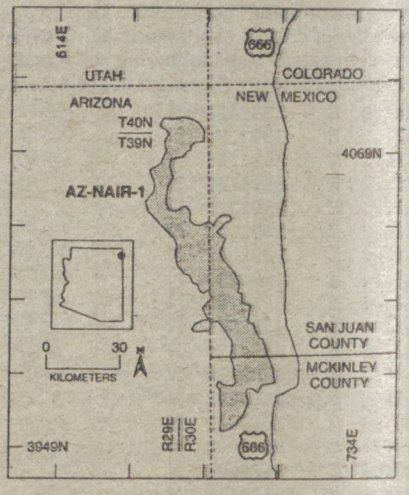


BILLING CODE 4310–55–C

AZ–KANF–5. From U.S. Geological Survey map: Tuba City 1983; Bureau of Land Management maps: Fredonia 1978, Grand Canyon 1984. The perimeter of critical habitat unit AZ–KANF–5 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

374340 E 4032182 N
372772 E 4036716 N
372861 E 4042136 N
373921 E 4046988 N
375933 E 4047114 N
378425 E 4044855 N
377283 E 4041540 N
378765 E 4037085 N
381370 E 4036595 N
385297 E 4037911 N
381311 E 4040592 N
378990 E 4048457 N
379629 E 4049528 N
381749 E 4049858 N
384816 E 4048615 N
387619 E 4046991 N
390729 E 4043286 N
393869 E 4044877 N
392574 E 4052611 N
396078 E 4059372 N
399413 E 4059180 N
400905 E 4053771 N
402409 E 4049754 N
403748 E 4044333 N
405368 E 4043124 N
406708 E 4036472 N
406776 E 4032955 N
408595 E 4025453 N
410483 E 4021820 N
following Kaibab National Forest/Grand Canyon National Park boundary westerly and northerly to
406200 E 4021704 N
continuing to
405568 E 4022995 N
405347 E 4025105 N
403567 E 4025847 N
402161 E 4027181 N
401772 E 4030093 N
402210 E 4031873 N
401091 E 4035788 N
401741 E 4039765 N
399772 E 4039788 N
397757 E 4040442 N
397368 E 4038870 N
398119 E 4037351 N
397423 E 4034404 N
396248 E 4030950 N
395875 E 4028394 N
397297 E 4023415 N
following Kaibab National Forest/Grand Canyon National Park boundary westerly and northerly, to closure at starting point
374340 E 4032182 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–NAIR–1. From U.S. Geological Survey maps: Rock Point 1986, Canyon de Chelly 1984; Bureau of Land Management maps: Gallup 1981, Toadlena 1980. The perimeter of critical habitat unit AZ–NAIR–1 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

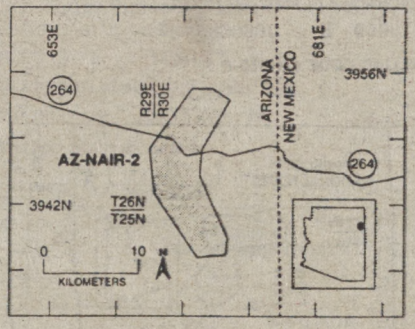
664498 E 4083196 N
667700 E 4082440 N
670789 E 4080812 N
672895 E 4077576 N
672548 E 4073349 N
669062 E 4073059 N
667261 E 4071276 N
667407 E 4069845 N
665785 E 4069188 N
664321 E 4067036 N
659333 E 4065894 N
658950 E 4062981 N
660292 E 4058522 N
658366 E 4055377 N

657688 E 4050045 N
657809 E 4047830 N
658727 E 4045611 N
661606 E 4044865 N
664085 E 4046660 N
665863 E 4047007 N
667386 E 4044565 N
667339 E 4041179 N
668962 E 4039593 N
671304 E 4039206 N
675106 E 4040824 N
676943 E 4039232 N
678611 E 4042165 N
680582 E 4043568 N
683292 E 4043334 N
684182 E 4041489 N
681529 E 4040110 N
678117 E 4036486 N
681766 E 4033841 N
679591 E 4028071 N
681238 E 4025027 N
684893 E 4021019 N
687201 E 4017013 N
687606 E 4014570 N
687022 E 4012032 N
688686 E 4011836 N
688713 E 4008089 N
692252 E 4006636 N
691136 E 4000425 N
693455 E 3999019 N
695658 E 3993691 N
697165 E 3993464 N
699146 E 3987141 N
701404 E 3981509 N
702348 E 3975511 N
697340 E 3974603 N
695249 E 3971528 N
693112 E 3973167 N
691507 E 3973078 N
690664 E 3971110 N
691780 E 3967833 N
689837 E 3962520 N
687004 E 3958869 N
684568 E 3956741 N
682344 E 3955677 N
680519 E 3955581 N
680750 E 3962194 N
680638 E 3967650 N
680106 E 3968809 N
680340 E 3972544 N
678777 E 3974290 N
679592 E 3976002 N
681834 E 3974549 N
685189 E 3974215 N
686727 E 3975646 N
685784 E 3978339 N
685615 E 3982153 N
684326 E 3986144 N
684971 E 3989539 N
684851 E 3992441 N
679159 E 4000412 N
676596 E 3999936 N
675715 E 3996500 N
669597 E 3996016 N
668510 E 3996997 N
670047 E 3999512 N
673451 E 4000906 N
676492 E 4001043 N
674489 E 4002078 N
672797 E 4005668 N
676546 E 4009755 N
675486 E 4012991 N
673089 E 4011645 N
671694 E 4012522 N
670765 E 4015043 N
668707 E 4015795 N
667336 E 4019085 N
665281 E 4019463 N
662482 E 4022942 N
661504 E 4027433 N
662238 E 4031362 N
661149 E 4033665 N
650331 E 4045040 N
649327 E 4048815 N
652609 E 4052722 N
653035 E 4055924 N
650944 E 4061684 N
655488 E 4064322 N
656411 E 4066910 N
657653 E 4069487 N
657108 E 4070798 N
656859 E 4073492 N
658455 E 4076275 N
657133 E 4078326 N
655710 E 4078670 N
654850 E 4079808 N
656438 E 4082748 N
659579 E 4082483 N

to closure at starting point

664498 E 4083196 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

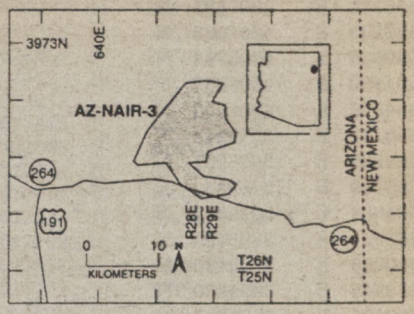
AZ–NAIR–2. From U.S. Geological Survey map: Ganado 1984. The perimeter of critical habitat unit AZ–NAIR–2 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

667884 E 3954269 N
670060 E 3954258 N
671888 E 3953041 N
668950 E 3947696 N
668783 E 3944993 N
671701 E 3938375 N
671481 E 3936605 N
668501 E 3936337 N
663963 E 3943110 N
663460 E 3947889 N

to closure at starting point

667884 E 3954269 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

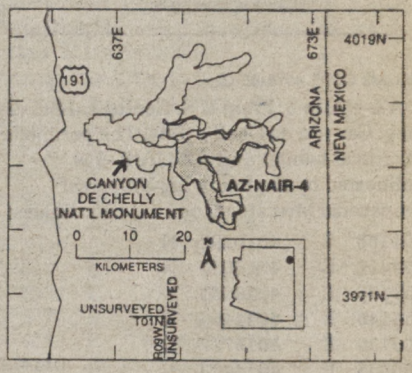
AZ-NAIR–3. From U.S. Geological Survey map: Ganado 1984. The perimeter of critical habitat unit AZ-NAIR–3 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

654984 E 3967813 N
657267 E 3967366 N
655791 E 3964771 N
657580 E 3964312 N
657683 E 3962446 N
659049 E 3960488 N
658863 E 3959065 N
655226 E 3957843 N
654890 E 3956304 N
652494 E 3956225 N
654617 E 3954350 N
658167 E 3953829 N
659118 E 3953119 N
658090 E 3951809 N
654278 E 3951170 N
651366 E 3953186 N
649301 E 3956167 N
645453 E 3955865 N
644842 E 3956413 N
646674 E 3960529 N
648692 E 3963284 N
652118 E 3967455 N

to closure at starting point

654984 E 3967813 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ-NAIR–4. From U.S. Geological Survey maps: Ganado 1984, Canyon de Chelly 1984. The perimeter of critical habitat unit AZ-NAIR–4 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

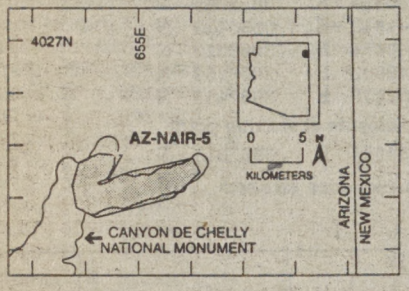
651340 E 4004495 N
652317 E 4003508 N

652011 E 4000874 N
656314 E 4001885 N
657299 E 4001028 N
659530 E 4003744 N
661180 E 4003853 N
664610 E 4002532 N
665312 E 3999944 N
666229 E 3998907 N
666049 E 3997832 N
664834 E 3999072 N
662934 E 3998499 N
660966 E 3999110 N
658946 E 3995380 N
653165 E 3996867 N
655439 E 3993748 N
656249 E 3989397 N
659860 E 3989917 N
660452 E 3986684 N
658866 E 3985885 N
658971 E 3983345 N
657330 E 3983340 N
654921 E 3984844 N
653725 E 3985917 N
653499 E 3988550 N
651463 E 3992664 N
650365 E 3991442 N
647590 E 3994126 N
648099 E 3996480 N
648080 E 3999867 N
646260 E 4000363 N
646348 E 4002790 N

to closure at starting point

651340 E 4004495 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

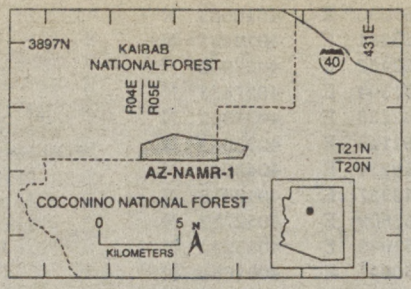
AZ–NAIR–5. From U.S. Geological Survey map: Canyon de Chelly 1984. The perimeter of critical habitat unit AZ-NAIR–5 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

651188 E 4016192 N
653417 E 4016047 N
652125 E 4013683 N
654146 E 4014464 N
660136 E 4015777 N
660865 E 4014423 N
658293 E 4012030 N
650992 E 4010081 N
649132 E 4011045 N
648743 E 4013154 N
649349 E 4015342 N

to closure at starting point

651188 E 4016192 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–NAMR–1. From Bureau of Land Management map: Flagstaff 1982. The perimeter of critical habitat unit AZ-NAMR–1 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

416959 E 3890683 N
418988 E 3891366 N
420643 E 3891032 N
422168 E 3890950 N
423618 E 3890551 N
423289 E 3889855 N

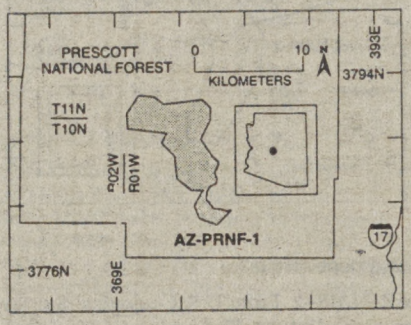
following Navajo Army Depot/Coconino National Forest boundary westerly to

416957 E 3889749 N

to closure at starting point

416959 E 3890683 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

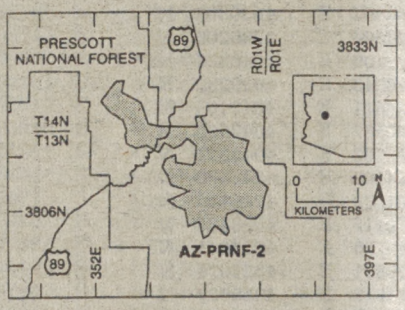
AZ–PRNF–1. From Bureau of Land Management map: Bradshaw Mountains 1981. The perimeter of critical habitat unit AZ-PRNF–1 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

379607 E 3781394 N
378315 E 3780049 N
376714 E 3780674 N
376229 E 3781860 N
377019 E 3783259 N
376019 E 3783268 N
374644 E 3784389 N
374453 E 3786485 N
373242 E 3787721 N
373723 E 3788587 N
370106 E 3789062 N
370033 E 3790473 N
371164 E 3792144 N
372624 E 3791987 N
373472 E 3791293 N
377033 E 3791700 N
377804 E 3790925 N
377777 E 3789829 N
376874 E 3788019 N
377994 E 3786380 N

following Castle Creek Wilderness boundary southerly, to closure at starting point

379607 E 3781394 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–PRNF–2. From Bureau of Land Management maps: Bradshaw Mountains 1981, Prescott 1981. The perimeter of critical habitat unit AZ-PRNF–2 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

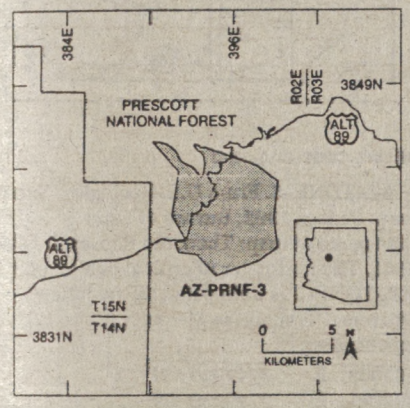
369367 E 3821419 N
370700 E 3818807 N
373441 E 3819206 N
374337 E 3818691 N
374840 E 3818005 N
377325 E 3817403 N
376590 E 3814870 N
376990 E 3813719 N
378680 E 3812052 N
378890 E 3810879 N
380474 E 3809601 N
379956 E 3808246 N
379413 E 3805464 N
378449 E 3804449 N
377139 E 3804495 N
375262 E 3805870 N
373673 E 3805263 N
373479 E 3804099 N
374005 E 3802354 N
373618 E 3801656 N
371668 E 3803387 N
370565 E 3801651 N
369753 E 3801277 N
369153 E 3804012 N
367306 E 3803214 N
366815 E 3805986 N
365380 E 3806547 N
363995 E 3807564 N
367475 E 3809108 N
364461 E 3810084 N
364031 E 3811508 N
363071 E 3813118 N
363576 E 3814387 N
365267 E 3815182 N
365307 E 3813851 N
368227 E 3813409 N
368536 E 3814397 N
368690 E 3816514 N
367237 E 3817815 N
366243 E 3816746 N
364996 E 3816169 N
363465 E 3817110 N
362515 E 3815517 N
360540 E 3816671 N
358831 E 3816213 N
357285 E 3816978 N

356961 E 3818502 N
357271 E 3819069 N
356680 E 3820827 N
354515 E 3822268 N
353028 E 3823983 N
355499 E 3827261 N
356891 E 3827377 N
356441 E 3825497 N
359637 E 3823729 N
360788 E 3820274 N
362688 E 3819820 N

following Prescott National Forest boundary easterly, to closure at starting point

369367 E 3821419 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

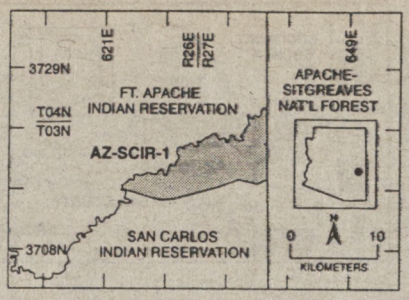
AZ–PRNF–3. From Bureau of Land Management map: Prescott 1981. The perimeter of critical habitat unit AZ-PRNF–3 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

393903 E 3844494 N
397673 E 3843175 N
399213 E 3842030 N
398907 E 3839370 N
399181 E 3837313 N
397845 E 3836328 N
394730 E 3835247 N
393417 E 3836764 N
392080 E 3836937 N
391844 E 3837620 N
392635 E 3837778 N
391622 E 3839567 N
392098 E 3842762 N
390251 E 3844860 N
390372 E 3844893 N

following Woodchute Wilderness boundary easterly and northerly, to closure at starting point

393903 E 3844494 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–SCIR–1. From Bureau of Land Management map: Nutrioso 1981. The perimeter of critical habitat unit AZ-SCIR–1 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

639681 E 3716228 N
638500 E 3715650 N
636471 E 3716161 N
633869 E 3715216 N
628910 E 3713886 N
627363 E 3713761 N
623026 E 3715071 N

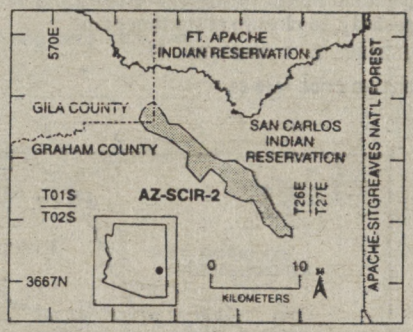
following Fort Apache Indian Reservation/ San Carlos Indian Reservation boundary easterly and northerly to

639570 E 3724456 N

to closure at starting point

639681 E 3716228 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

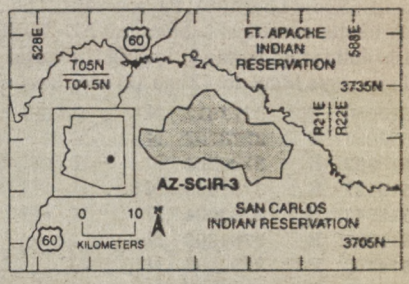
AZ–SCIR–2. From Bureau of Land Management maps: Nutrioso 1981, Clifton 1986, Globe 1979, Seneca 1992; U.S. Geological Survey map: Seneca 1992. The perimeter of critical habitat unit AZ-SCIR–2 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

592922 E 3707844 N
595486 E 3704471 N
596208 E 3702896 N
598409 E 3702786 N
600267 E 3701278 N
606352 E 3695376 N
608581 E 3694543 N
611204 E 3694765 N
613762 E 3692888 N
615151 E 3692370 N
615372 E 3691301 N
616366 E 3689130 N
617798 E 3688319 N
619439 E 3685349 N
620057 E 3683885 N
622357 E 3681138 N
622809 E 3680112 N
624123 E 3679490 N
624217 E 3677371 N
622826 E 3677973 N
622063 E 3677415 N
620861 E 3677722 N
619076 E 3679752 N
617848 E 3680413 N
617098 E 3682507 N
615311 E 3685796 N
613781 E 3685423 N
612239 E 3685874 N
608966 E 3687384 N
609498 E 3689571 N
607426 E 3691554 N
605695 E 3692740 N
603396 E 3689726 N
600242 E 3693293 N
600602 E 3695175 N
600624 E 3696137 N
596036 E 3699545 N
591315 E 3701454 N
589631 E 3703791 N
590313 E 3705624 N
591421 E 3707026 N

to closure at starting point

592922 E 3707844 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–SCIR–3. From U.S. Geological Survey map: Seneca 1992. The perimeter of critical habitat unit AZ–SCIR–3 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

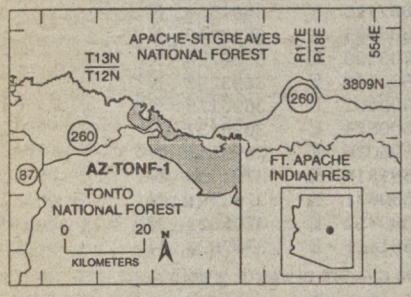
561642 E 3734349 N
562805 E 3732706 N
565002 E 3731514 N
567723 E 3729519 N
567785 E 3728057 N
569282 E 3727782 N
572701 E 3728025 N
573940 E 3726781 N
575159 E 3724075 N
576532 E 3723781 N
575679 E 3721453 N
574362 E 3719699 N
574240 E 3717304 N
571051 E 3717524 N
568455 E 3716006 N
567796 E 3716889 N
566895 E 3719836 N
564774 E 3719298 N
562330 E 3720763 N
560874 E 3720650 N
559494 E 3721335 N
557490 E 3719902 N
555012 E 3720550 N
551623 E 3720047 N

549710 E 3721396 N
547444 E 3724567 N
547779 E 3726919 N
551948 E 3726307 N
552467 E 3728968 N
554753 E 3731167 N
556667 E 3730630 N
557933 E 3732790 N
559510 E 3734160 N

to closure at starting point

561642 E 3734349 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–TONF–1. From U.S. Geological Survey maps: Show Low 1981, Payson 1981. The perimeter of critical habitat unit AZ–TONF–1 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

520080 E 3777912 N
517953 E 3778757 N
518382 E 3780284 N
519127 E 3781453 N
518841 E 3783084 N
517987 E 3781609 N
514700 E 3780485 N
509300 E 3780736 N
510523 E 3781950 N
503673 E 3789186 N
500000 E 3790869 N
498153 E 3791713 N
496906 E 3793778 N
496858 E 3795523 N
499216 E 3795390 N
500000 E 3796592 N
500401 E 3797081 N
500000 E 3798029 N
499152 E 3799129 N
498789 E 3799137 N
496139 E 3797134 N
493403 E 3798445 N
491901 E 3799803 N
491857 E 3801486 N
493500 E 3803906 N

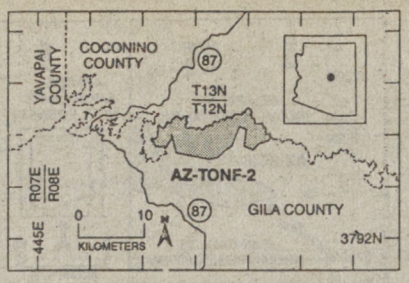
following Apache-Sitgreaves National Forest/Tonto National Forest boundary to

520043 E 3795178 N

following Tonto National Forest/Fort Apache Indian Reservation boundary, to closure at starting point

520080 E 3777912 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

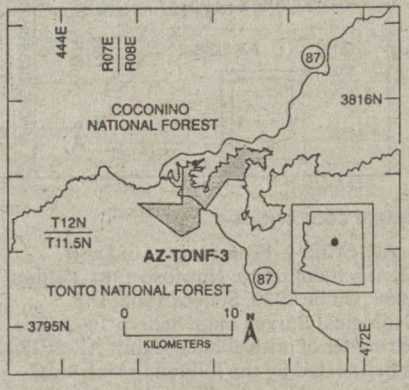
AZ–TONF–2. From U.S. Geological Survey map: Payson 1981. The perimeter of critical habitat unit AZ–TONF–2 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

480368 E 3807751 N
480144 E 3807214 N
478574 E 3806656 N
477768 E 3805723 N
476383 E 3806351 N
476712 E 3808891 N
475645 E 3809345 N
474973 E 3807656 N
474505 E 3806301 N
473367 E 3805588 N
472338 E 3804536 N
471097 E 3804268 N
466031 E 3805227 N
465374 E 3807892 N
465323 E 3807396 N
464558 E 3806130 N

following Coconino National Forest/Tonto National Forest westerly, northerly and easterly, to closure at starting point

480368 E 3807751 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

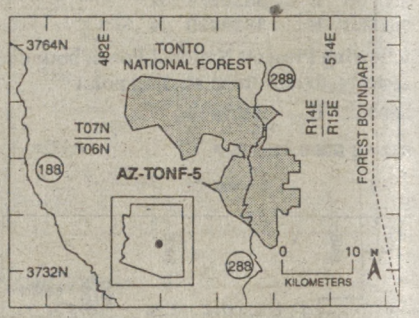
AZ–TONF–3. From U.S. Geological Survey map: Payson 1981. The perimeter of critical habitat unit AZ–TONF–3 is delineated by the following Universal Transverse Mercator (Zone 12) AZ–TONF–3 coordinates:

460842 E 3808536 N
459306 E 3808634 N
457269 E 3805862 N
456714 E 3805864 N
456712 E 3804231 N
455028 E 3803322 N
451031 E 3806378 N
455097 E 3806301 N
455175 E 3809733 N

following Coconino National Forest/Tonto National Forest boundary easterly, southerly and northerly, to closure at starting point

460842 E 3808536 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

AZ–TONF–5. From U.S. Geological Survey map: Seneca 1992, Bureau of Land Management map: Theodore Roosevelt Lake 1981. The perimeter of critical habitat unit AZ–TONF–5 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

493068 E 3747729 N
492781 E 3749030 N
489666 E 3752724 N
486104 E 3751938 N
484964 E 3754141 N
485428 E 3758105 N
487212 E 3759579 N
494623 E 3758736 N
501055 E 3758611 N
501087 E 3756530 N
502617 E 3755173 N
505523 E 3755297 N
507045 E 3754065 N

following Sierra Ancha Wilderness boundary southerly to

506455 E 3735628 N

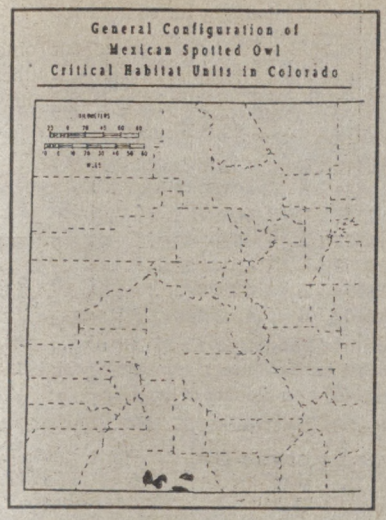
continuing to

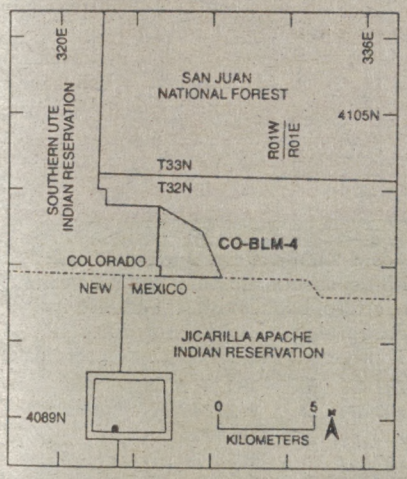
505584 E 3735094 N
504686 E 3735639 N
503384 E 3737575 N
501477 E 3739176 N
499472 E 3740415 N
498265 E 3743160 N
495941 E 3744432 N

following Salome Wilderness boundary northerly, westerly and southerly, to closure at starting point

493068 E 3747729 N

BILLING CODE 4310–55–P





BILLING CODE 4310–55–C

CO–BLM–4. From Bureau of Land Management map: Antonito 1985. The perimeter of critical habitat unit CO–BLM–4 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

325228 E 4100138 N
327504 E 4098823 N
328541 E 4096404 N

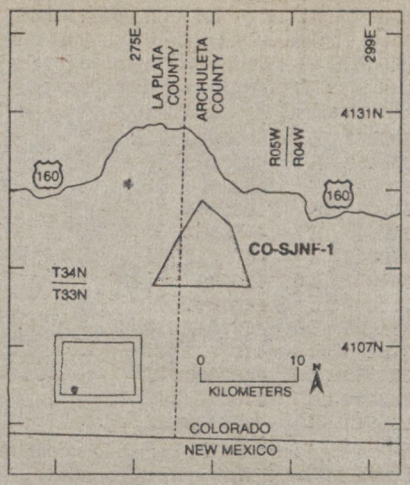
following Colorado/New Mexico state line westerly to

325319 E 4096470 N

following Bureau of Land Management/ Southern Ute Indian Reservation northerly, to closure at starting point

325228 E 4100138 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

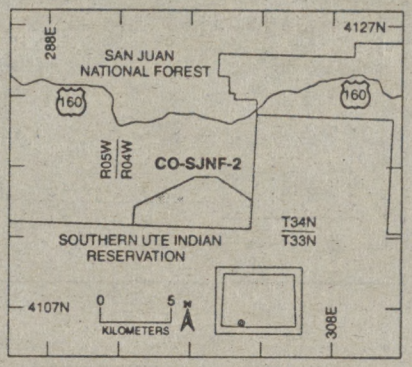
CO–SJNF–1. From Bureau of Land Management map: Durango 1983. The perimeter of critical habitat unit CO–SJNF–1 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

276898 E 4113198 N
279427 E 4117982 N
281866 E 4121940 N
284899 E 4119341 N
286870 E 4113038 N

following San Juan National Forest/Southern Ute Indian Reservation boundary westerly, to closure at starting point

276898 E 4113198 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

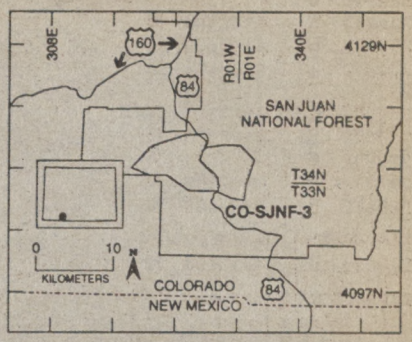
CO–SJNF–2. From Bureau of Land Management map: Durango 1983. The perimeter of critical habitat unit CO–SJNF–2 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

293946 E 4112846 N
294050 E 4114193 N
298337 E 4116308 N
299838 E 4116295 N
302335 E 4114651 N

following San Juan National Forest/Southern Ute Indian Reservation boundary southerly and westerly, to closure at starting point

293946 E 4112846 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

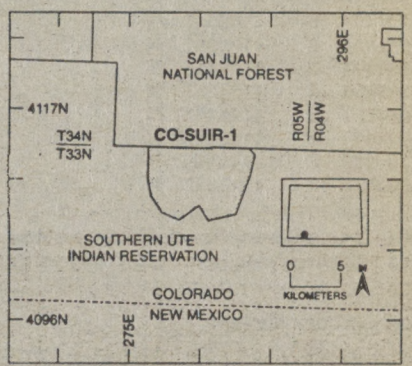
CO–SJNF–3. From Bureau of Land Management maps: Antonito 1985, Durango 1983. The perimeter of critical habitat unit CO–SJNF–3 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

327034 E 4117356 N
328126 E 4116497 N
327811 E 4115734 N
330405 E 4116066 N
332447 E 4115985 N
334230 E 4114115 N
333150 E 4110836 N
332918 E 4108890 N
331199 E 4109202 N
329246 E 4110075 N
325805 E 4110111 N
322907 E 4112126 N
320660 E 4112125 N
318375 E 4113046 N
320753 E 4115731 N
321571 E 4116113 N
325444 E 4117381 N

to closure at starting point

327034 E 4117356 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

CO–SUIR–1. From Bureau of Land Management map: Durango 1983. The perimeter of critical habitat unit CO–SUIR–1 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

276898 E 4113198 N

following San Juan National Forest/Southern Ute Indian Reservation boundary easterly to

286870 E 4113038 N

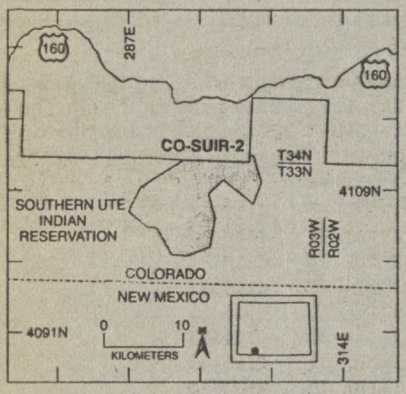
continuing to

287440	E	4112429	N
286996	E	4110380	N
285580	E	4106485	N
282835	E	4105848	N
281908	E	4107325	N
279969	E	4105900	N
278257	E	4106674	N
277148	E	4108267	N
276811	E	4109992	N

to closure at starting point

276898	E	4113198	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

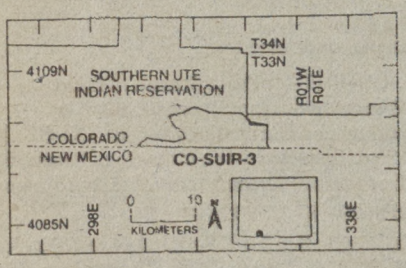
CO–SUIR–2. From Bureau of Land Management map: Durango 1983. The perimeter of critical habitat unit CO–SUIR–2 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

302291	E	4113405	N
302771	E	4113393	N
303788	E	4109966	N
302766	E	4107219	N
298976	E	4110286	N
297105	E	4108500	N
297948	E	4105482	N
297299	E	4101803	N
294405	E	4100647	N
292399	E	4100827	N
290577	E	4104115	N
289305	E	4104285	N
286967	E	4106271	N
288474	E	4109259	N
290243	E	4110499	N
293946	E	4112846	N

following San Juan National Forest/Southern Ute Indian Reservation boundary easterly and northerly, to closure at starting point

302291	E	4113405	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

CO–SUIR–3. From Bureau of Land Management maps: Durango 1983, Antonito 1985. The perimeter of critical habitat unit CO–SUIR–3 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

305023	E	4096922	N
306518	E	4098292	N
310805	E	4097689	N
312377	E	4098203	N
312040	E	4099067	N
310649	E	4100042	N
309901	E	4101607	N
311897	E	4102041	N
314005	E	4103047	N
316438	E	4102121	N
321250	E	4102023	N
322490	E	4100643	N
325228	E	4100138	N

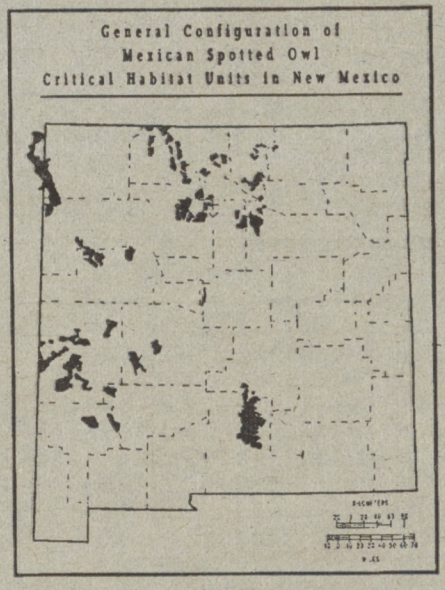
following Southern Ute Indian Reservation/Bureau of Land Management boundary southerly to

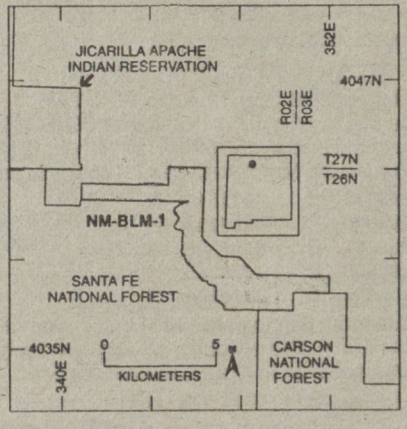
325319	E	4096470	N

following New Mexico/Colorado state line westerly, to closure at starting point

305023	E	4096922	N

BILLING CODE 4310–55–P





BILLING CODE 4310–55–C

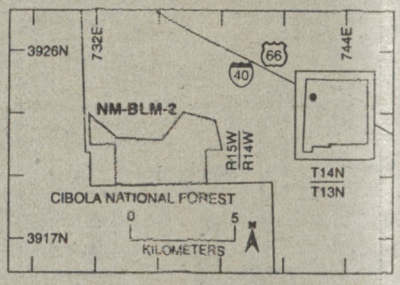
NM–BLM–1. From Bureau of Land Management maps: Chama 1981, Abiquiu 1978. The perimeter of critical habitat unit NM–BLM–1 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

346419	E	4043099	N
346284	E	4039952	N
347142	E	4039142	N
347955	E	4039103	N
348702	E	4038302	N
351972	E	4038225	N
351962	E	4037446	N

following Bureau of Land Management/U.S. Forest Service boundary westerly and northerly, to closure at starting point

340889	E	4041655	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

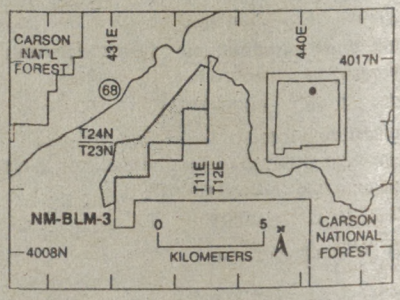
NM–BLM–2. From Bureau of Land Management map: Zuni 1981. The perimeter of critical habitat unit NM–BLM–2 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

731662	E	3922977	N
733028	E	3921747	N
735176	E	3921726	N
736182	E	3923060	N
737711	E	3922677	N
738046	E	3921256	N

following Bureau of Land Management boundary westerly, to closure at starting point

731662	E	3922977	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

NM–BLM–3. From Bureau of Land Management map: Taos 1983. The perimeter of critical habitat unit NM–BLM–3 is

delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

435597 E 4016742 N

following Bureau of Land Management boundary southerly to

431185 E 4010355 N

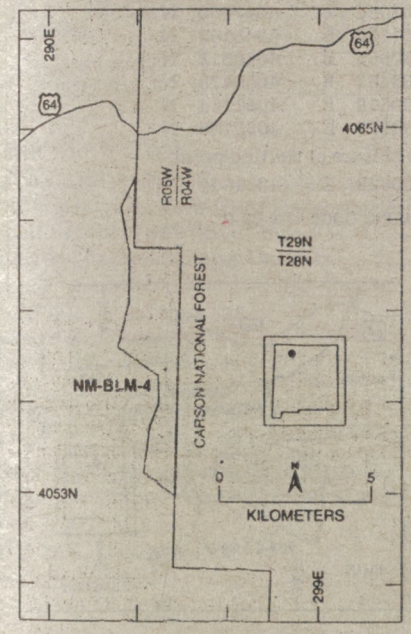
continuing to

430666 E 4010128 N
430453 E 4011203 N
431048 E 4012226 N
431188 E 4013213 N
432334 E 4013374 N
435232 E 4016894 N

to closure at starting point

435597 E 4016742 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

NM–BLM–4. From U.S. Geological Survey map: Navajo Reservoir 1980. The perimeter of critical habitat unit NM–BLM–4 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

292948 E 4063398 N

following Bureau of Land Management/U.S. Forest Service boundary southerly to

294282 E 4052894 N

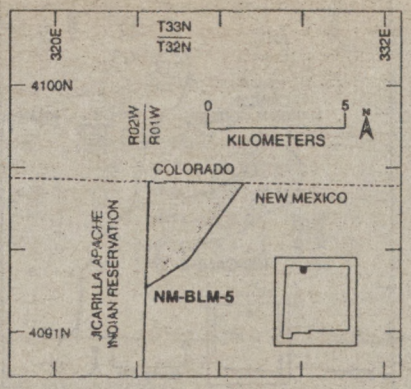
continuing to

293223 E 4053664 N
293429 E 4055209 N
293724 E 4055959 N
293704 E 4056853 N
292360 E 4057778 N
292725 E 4059240 N
292739 E 4060923 N
292452 E 4062412 N

to closure at starting point

292948 E 4063398 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

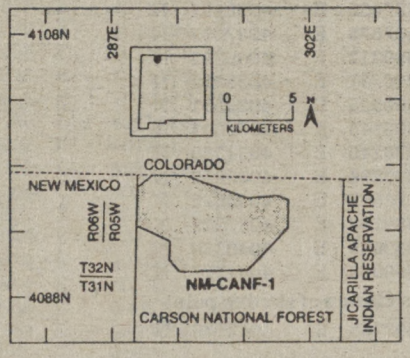
NM–BLM–5. From Bureau of Land Management map: Chama 1981. The perimeter of critical habitat unit NM–BLM–5 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

326880 E 4096438 N
324833 E 4093549 N
323285 E 4092583 N
323436 E 4096510 N

following New Mexico/Colorado state line easterly, to closure at starting point

326880 E 4096438 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

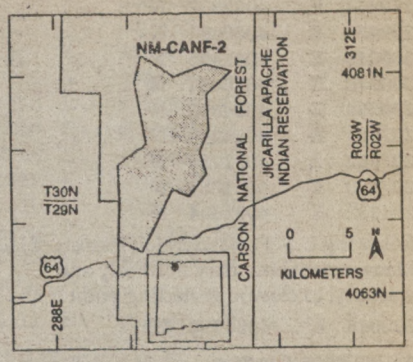
NM–CANF–1. From U.S. Geological Survey map: Navajo Reservoir 1980. The perimeter of critical habitat unit NM–CANF–1 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

292662 E 4097213 N
297259 E 4095511 N
299622 E 4095691 N
300408 E 4095355 N
300393 E 4093220 N
297305 E 4089973 N
292080 E 4089934 N
291350 E 4090831 N
291409 E 4092222 N
288869 E 4093424 N
288932 E 4096317 N
290066 E 4097276 N

following New Mexico/Colorado state line, to closure at starting point

292662 E 4097213 N

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BILLING CODE 4310–55–C

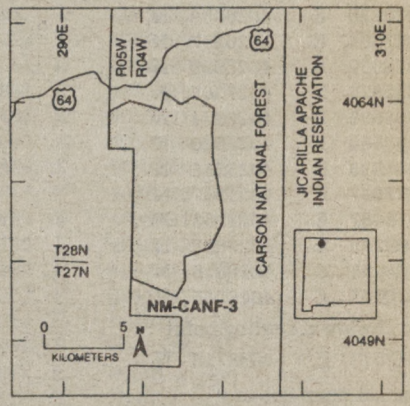
NM–CANF–2. From U.S. Geological Survey map: Navajo Reservoir 1980. The perimeter of critical habitat unit NM–CANF–2 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

295082 E 4082660 N
297776 E 4080896 N
300371 E 4081841 N
302444 E 4081290 N
300381 E 4079391 N
300540 E 4076496 N
299782 E 4074701 N
300306 E 4072919 N
298848 E 4071068 N
297536 E 4071675 N
295016 E 4066624 N
293046 E 4067611 N
293185 E 4070746 N
293085 E 4073778 N
295407 E 4075432 N
294514 E 4080505 N

to closure at starting point

295082 E 4082660 N

BILLING CODE 4310–55–P



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NM–CANF–3. From U.S. Geological Survey map: Belen 1980. The perimeter of critical habitat unit NM–CANF–3 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

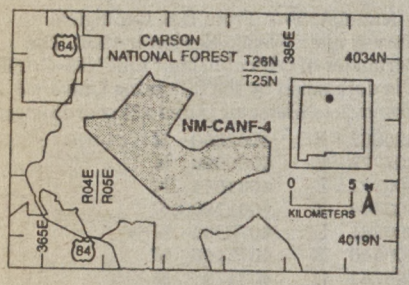
292948 E 4063398 N
294260 E 4064084 N
296187 E 4063544 N
296443 E 4064614 N
297497 E 4063863 N
298324 E 4064351 N

299576	E	4063596	N
299444	E	4062332	N
299470	E	4060484	N
300019	E	4057496	N
300070	E	4056441	N
299294	E	4054812	N
297627	E	4054248	N
297682	E	4052739	N
297100	E	4051759	N
294282	E	4052894	N

following U.S. Forest Service/Bureau of Land Management boundary northerly and westerly, to closure at starting point

292948	E	4063398	N

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BILLING CODE 4310–55–C

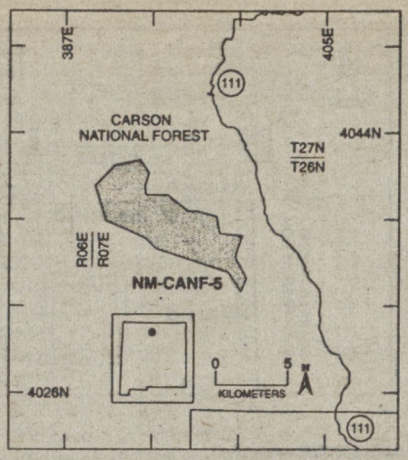
NM–CANF–4. From Bureau of Land Management map: San Mateo Mountains 1981. The perimeter of critical habitat unit NM–CANF–4 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

373579	E	4032718	N
373914	E	4032004	N
375963	E	4031537	N
377209	E	4030945	N
375112	E	4027525	N
376850	E	4026389	N
377866	E	4026257	N
378929	E	4026999	N
382826	E	4027565	N
383632	E	4026954	N
383564	E	4024626	N
381533	E	4023981	N
377977	E	4021387	N
375487	E	4021263	N
368275	E	4027898	N
368252	E	4028816	N
370641	E	4029045	N

to closure at starting point

373579	E	4032718	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

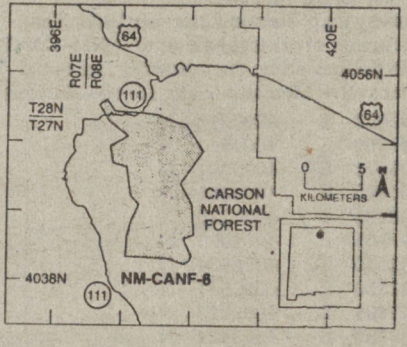
NM–CANF–5. From Bureau of Land Management maps: Chama 1981, Abiquiu 1978. The perimeter of critical habitat unit NM–CANF–5 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

392165	E	4042116	N
392771	E	4041194	N
392502	E	4040310	N
392552	E	4039703	N
394067	E	4039672	N
395495	E	4038541	N
396093	E	4038554	N
397455	E	4038191	N
397675	E	4037007	N
399212	E	4036861	N
398731	E	4035381	N
399528	E	4033901	N
399143	E	4033004	N
398240	E	4034355	N
393294	E	4035957	N
392557	E	4036672	N
389798	E	4037925	N
389045	E	4040330	N
390388	E	4041727	N

to closure at starting point

392165	E	4042116	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

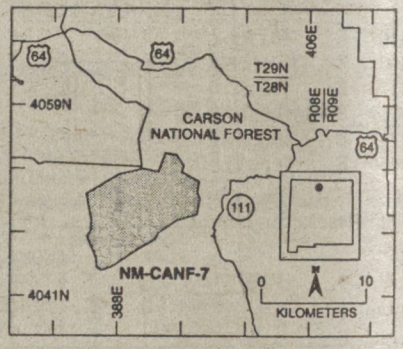
NM–CANF–6. From Bureau of Land Management maps: Chama 1981, Abiquiu 1978. The perimeter of critical habitat unit NM–CANF–6 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

400629	E	4053646	N
401323	E	4052637	N
404028	E	4052467	N
404995	E	4052360	N
406784	E	4051680	N
407505	E	4051521	N
409065	E	4049207	N
407083	E	4046378	N
408093	E	4044589	N
408313	E	4041941	N
407405	E	4041579	N
408094	E	4040090	N
407950	E	4039697	N
407481	E	4039359	N
406107	E	4039853	N
402332	E	4040006	N
402463	E	4041778	N
402793	E	4043074	N
403456	E	4044569	N
402743	E	4045301	N
402386	E	4047800	N
401172	E	4048167	N
400955	E	4049612	N
402481	E	4050478	N
400818	E	4051764	N
399976	E	4053168	N

to closure at starting point

400629	E	4053646	N

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NM–CANF–7. From Bureau of Land Management map: Chama 1981. The perimeter of critical habitat unit NM-CANF–7 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

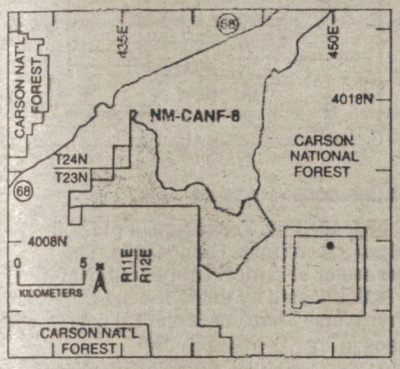
392437	E	4054501	N
393479	E	4054340	N
394189	E	4053268	N
393994	E	4052708	N
395645	E	4051818	N
395465	E	4050786	N
395716	E	4050174	N
395450	E	4048728	N
393561	E	4048143	N
391810	E	4046950	N
391561	E	4046358	N
389765	E	4045293	N
387566	E	4043772	N
386569	E	4043386	N
386043	E	4043654	N
385977	E	4044571	N
385102	E	4046573	N
385464	E	4047126	N
385508	E	4048168	N

385034 E 4050631 N
388071 E 4052483 N
390333 E 4053036 N
391792 E 4052741 N

to closure at starting point

392437 E 4054501 N

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NM–CANF–8. From Bureau of Land Management map: Taos 1983. The perimeter of critical habitat unit NM–CANF–8 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

444407 E 4011054 N
445887 E 4008664 N
444279 E 4007357 N
443082 E 4005673 N
441761 E 4005440 N
440460 E 4006342 N

following U.S. Forest Service/Picuris Pueblo Indian Reservation boundary northerly and westerly to

432103 E 4010484 N

continuing to

431185 E 4010355 N

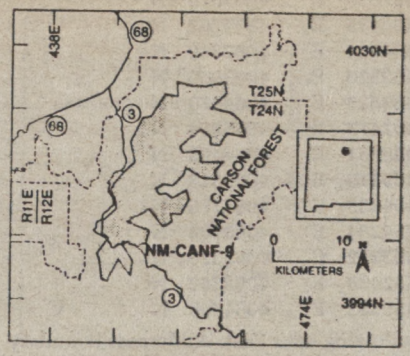
following U.S. Forest Service/Bureau of Land Management boundary northerly to

431203 E 4011542 N
432771 E 4011566 N
432763 E 4013194 N
434371 E 4013182 N
434388 E 4014786 N
435575 E 4014778 N
435597 E 4016742 N

following U.S. Forest Service/private boundary southerly and easterly, to closure at starting point

444407 E 4011054 N

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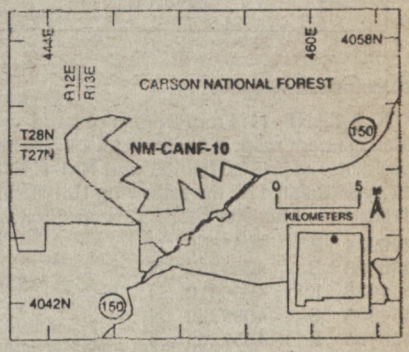
NM–CANF–9. From Bureau of Land Management map: Taos 1983. The perimeter of critical habitat unit NM-CANF–9 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

455512 E 4025045 N
457328 E 4024532 N
459410 E 4024238 N
462224 E 4024950 N
462542 E 4023399 N
460258 E 4021342 N
463207 E 4020829 N
464505 E 4019697 N
465213 E 4017372 N
462565 E 4017808 N
461610 E 4016116 N
460324 E 4016206 N
460287 E 4017272 N
458816 E 4018216 N
456024 E 4015795 N
456465 E 4014979 N
458818 E 4015289 N
459016 E 4013723 N
462160 E 4013806 N
460937 E 4012312 N
461356 E 4011329 N
459284 E 4011423 N
456901 E 4012856 N
456548 E 4011793 N
455071 E 4010271 N
453844 E 4010493 N
452668 E 4009760 N
453262 E 4009056 N
454097 E 4009245 N
455101 E 4008596 N
456971 E 4009717 N
457457 E 4008461 N
456268 E 4006276 N
454850 E 4006325 N
455075 E 4005214 N
453783 E 4004534 N
451776 E 4006843 N
448730 E 4005100 N
451851 E 4003878 N
451418 E 4002164 N
450288 E 4001636 N
449068 E 4002054 N
448072 E 4002170 N
448108 E 4001741 N
449565 E 3999591 N
449250 E 3997481 N
447518 E 3999597 N
445941 E 3996485 N
445123 E 3996998 N
444804 E 3999718 N
444436 E 4000612 N
446057 E 4002783 N
445135 E 4003397 N
445173 E 4005180 N
447152 E 4007005 N
446887 E 4008469 N
446265 E 4009404 N
446753 E 4010378 N
449689 E 4013555 N
449051 E 4016491 N
450717 E 4019920 N
451921 E 4020145 N
453870 E 4023315 N
455622 E 4022944 N

to closure at starting point

455512 E 4025045 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

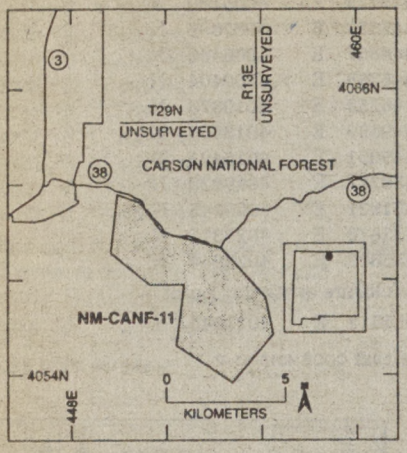
NM–CANF–10. From Bureau of Land Management map: Wheeler Peak 1982. The perimeter of critical habitat unit NM–CANF–10 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

451209 E 4044786 N
450341 E 4045639 N
449559 E 4045497 N
449568 E 4046718 N
446447 E 4049286 N
445218 E 4050499 N
445051 E 4052090 N
445921 E 4052985 N
447895 E 4053417 N
449038 E 4053158 N
447410 E 4051828 N
449616 E 4050226 N
448444 E 4049495 N
450109 E 4048652 N
449422 E 4047421 N
452282 E 4047642 N
451933 E 4049444 N
453430 E 4048328 N
453097 E 4050127 N
454506 E 4049393 N
454617 E 4050510 N
456941 E 4049618 N

following Wheeler Peak Wilderness boundary westerly, to closure at starting point

451209 E 4044786 N

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BILLING CODE 4310–55–C

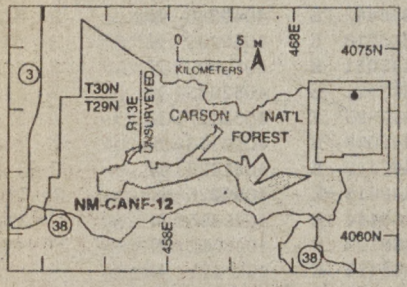
NM–CANF–11. From Bureau of Land Management map: Wheeler Peak 1982. The perimeter of critical habitat unit NM–CANF–11 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

449934	E	4061600	N
450893	E	4061256	N
451826	E	4060010	N
454305	E	4059359	N
456168	E	4057285	N
456506	E	4055714	N
454778	E	4053664	N
452412	E	4055237	N
452737	E	4057797	N
451296	E	4057800	N
449651	E	4059135	N

to closure at starting point

449934	E	4061600	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

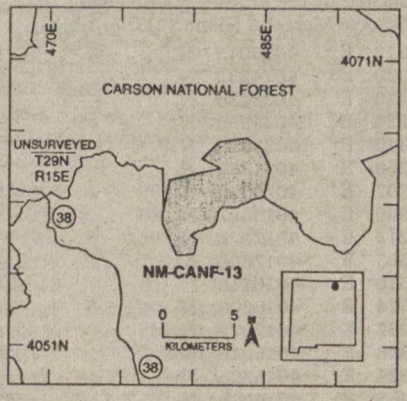
NM–CANF–12. From Bureau of Land Management map: Wheeler Peak 1982. The perimeter of critical habitat unit NM–CANF–12 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

461765	E	4068754	N
462402	E	4068220	N
460418	E	4066009	N
462591	E	4066191	N
463930	E	4065679	N
463951	E	4066309	N
464310	E	4066361	N
464570	E	4065467	N
465597	E	4066589	N
466161	E	4065507	N
464973	E	4064059	N
467035	E	4065070	N
469435	E	4064792	N
464814	E	4062389	N
463830	E	4063060	N
463528	E	4064473	N
462473	E	4065554	N
459751	E	4064455	N
456110	E	4063618	N
454633	E	4064155	N
454284	E	4063108	N
453272	E	4063325	N
452438	E	4063382	N
452382	E	4064896	N

following Latir Peak Wilderness boundary easterly, to closure at starting point

461765	E	4068754	N

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BILLING CODE 4310–55–C

NM–CANF–13. From Bureau of Land Management map: Wheeler Peak 1982. The perimeter of critical habitat unit NM–CANF–13 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

477956	E	4060624	N
478355	E	4062603	N
481874	E	4063449	N
480594	E	4064077	N
481798	E	4065299	N
483740	E	4065576	N
484759	E	4064826	N
485401	E	4063425	N
484938	E	4061504	N

following Carson National Forest boundary westerly to

479890	E	4058718	N

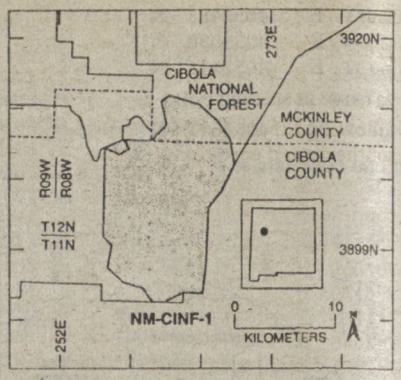
continuing to

480326	E	4058415	N
480091	E	4057431	N
478875	E	4057313	N
477861	E	4059530	N
477840	E	4060160	N

to closure at starting point

477956	E	4060624	N

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NM–CINF–1. From Bureau of Land Management map: Grants 1978. The perimeter of critical habitat unit NM–CINF–1 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

269326	E	3907440	N

following Cibola National Forest/Cebolleta Grant boundary southerly to

267991	E	3904671	N
266758	E	3903134	N
266501	E	3897545	N
266161	E	3894600	N
264216	E	3894655	N

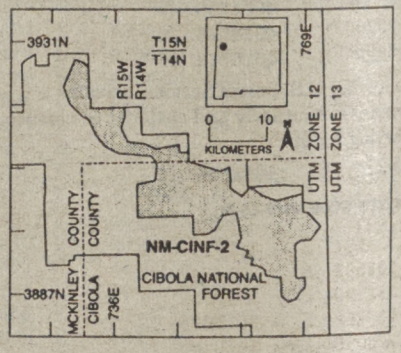
continuing to

262334	E	3893737	N
261119	E	3893762	N
260229	E	3895120	N
258330	E	3895687	N
256693	E	3897174	N
257127	E	3899398	N
256284	E	3900263	N
256461	E	3909058	N
258282	E	3909860	N
261058	E	3909760	N
262582	E	3911317	N
262071	E	3913672	N
262902	E	3914276	N
265858	E	3913361	N
267626	E	3911746	N
268871	E	3909934	N

to closure at starting point

269326	E	3907440	N

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BILLING CODE 4310–55–P

NM–CINF–2. From Bureau of Land Management map: Zuni 1981. The perimeter of critical habitat unit NM–CINF–2 is

delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

728974	E	3927891	N
730469	E	3927412	N
731319	E	3926574	N

following Cibola National Forest boundary southerly and easterly to

737547	E	3919639	N

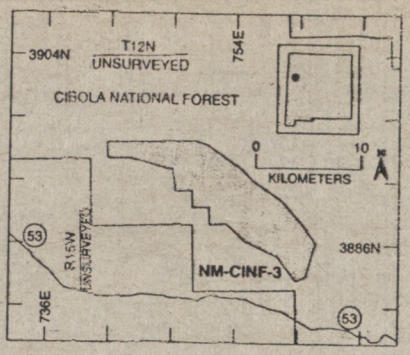
continuing to

737713	E	3918043	N
737039	E	3916024	N
738179	E	3913675	N
741140	E	3913338	N
743068	E	3912406	N
747071	E	3913198	N
747110	E	3911838	N
748715	E	3911887	N
748753	E	3910272	N
754195	E	3908556	N
755793	E	3909262	N
756029	E	3907016	N
755972	E	3905633	N
757971	E	3904253	N
759443	E	3905854	N
761543	E	3904350	N
763971	E	3903401	N
768690	E	3904567	N
768831	E	3901356	N
769697	E	3901225	N
771958	E	3898737	N
770162	E	3896396	N
768455	E	3896331	N
767401	E	3895562	N
767631	E	3889815	N
769194	E	3889856	N
769249	E	3888120	N
768315	E	3887258	N
767634	E	3886118	N
766290	E	3885614	N
765003	E	3886699	N
764844	E	3889859	N
762154	E	3890301	N
762130	E	3891233	N
760842	E	3892025	N
759634	E	3892161	N
759906	E	3893224	N
758627	E	3893554	N
759127	E	3894586	N
757086	E	3895287	N
757907	E	3896915	N
757051	E	3901217	N
754708	E	3900843	N
753346	E	3898275	N
752083	E	3897586	N
749628	E	3897451	N
749450	E	3900734	N
739960	E	3900426	N
739791	E	3906245	N
742981	E	3906947	N
743214	E	3909884	N
742316	E	3911138	N
736629	E	3911589	N
734257	E	3912786	N
732597	E	3914847	N
731320	E	3917558	N
730252	E	3918038	N
728050	E	3920206	N
726964	E	3923178	N

to closure at starting point

728974	E	3927891	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

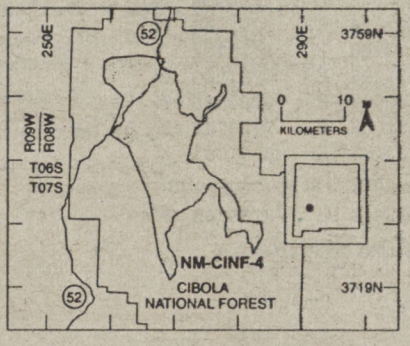
NM–CINF–3. From Bureau of Land Management map: Zuni 1981. The perimeter of critical habitat unit NM–CINF–3 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

741674	E	3895631	N
750097	E	3895858	N
751347	E	3895473	N
754515	E	3893272	N
755588	E	3892149	N
758291	E	3890283	N
760271	E	3888114	N
761655	E	3886170	N
760728	E	3882894	N
759754	E	3882525	N
758017	E	3884859	N
754818	E	3886344	N
753147	E	3887953	N
751523	E	3887859	N
751465	E	3889473	N
749876	E	3889450	N
749829	E	3891048	N
748244	E	3891009	N
747938	E	3893039	N
743793	E	3894140	N
741757	E	3894084	N

to closure at starting point

741674	E	3895631	N

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BILLING CODE 4310–55–C

NM–CINF–4. From Bureau of Land Management map: San Mateo Mountains 1979. The perimeter of critical habitat unit NM–CINF–4 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

277487	E	3750826	N
278003	E	3750825	N
278202	E	3749412	N
277198	E	3747921	N
275136	E	3746291	N
274960	E	3745176	N
273358	E	3743846	N
272467	E	3740707	N
272070	E	3738927	N
272935	E	3738505	N
274450	E	3738540	N
275429	E	3736926	N
277026	E	3736109	N
279648	E	3733057	N
280220	E	3731477	N
280137	E	3729540	N
283585	E	3729268	N
283911	E	3727113	N
282322	E	3724246	N

following Apache Kid wilderness boundary westerly to

270219	E	3720992	N

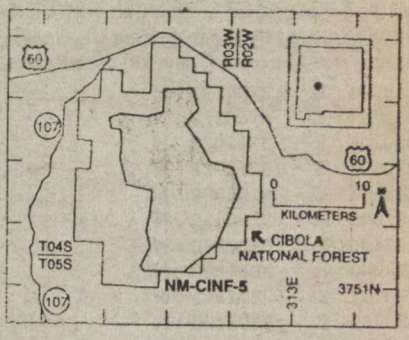
continuing to

269298	E	3720142	N
267574	E	3723956	N
266064	E	3733236	N
262781	E	3741144	N
259877	E	3743089	N
261233	E	3746107	N
262062	E	3748742	N
260034	E	3750784	N
259227	E	3751102	N
258894	E	3752069	N
259032	E	3754491	N
260106	E	3755089	N
264778	E	3755516	N
268202	E	3754948	N

following Withington Wilderness boundary southerly and easterly, to closure at starting point

277487	E	3750826	N

BILLING CODE 4310–55–P



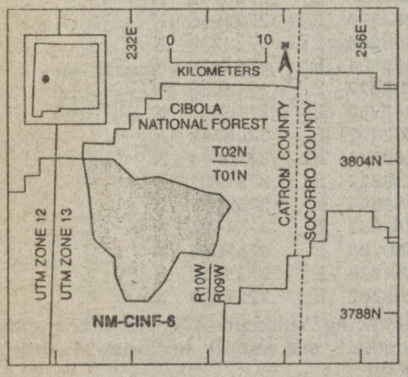
BILLING CODE 4310–55–C

NM–CINF–5. From Bureau of Land Management maps: Magdalena 1979, San Mateo Mountains 1979. The perimeter of critical habitat unit NM–CINF–5 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

301747	E	3773333	N
302462	E	3770993	N
301025	E	3769355	N
302839	E	3766911	N
303779	E	3765083	N
306367	E	3764416	N
307201	E	3762127	N
304596	E	3755771	N
300851	E	3752634	N
296381	E	3752724	N

296032 E 3753282 N
297100 E 3755450 N
296653 E 3757275 N
297016 E 3758929 N
297305 E 3761699 N
294423 E 3762335 N
293683 E 3765310 N
293895 E 3766995 N
293727 E 3768551 N
292689 E 3768732 N
292445 E 3769879 N
293796 E 3770377 N
296675 E 3770103 N
298481 E 3770627 N
298544 E 3773204 N
to closure at starting point
301747 E 3773333 N

BILLING CODE 4310–55–P

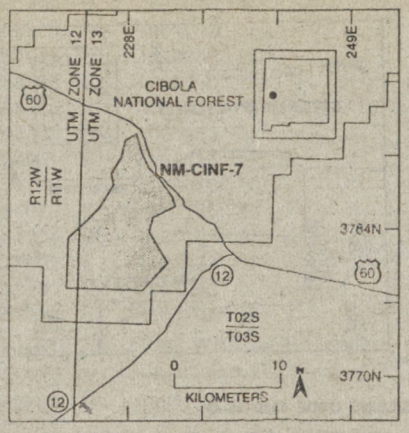


BILLING CODE 4310–55–C

NM–CINF–6. From Bureau of Land Management map: Magdalena 1979. The perimeter of critical habitat unit NM–CINF–6 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

233694 E 3789333 N
231361 E 3789378 N
230246 E 3792072 N
230191 E 3793928 N
228111 E 3795850 N
227890 E 3796455 N
227488 E 3800764 N
226900 E 3804399 N
230102 E 3804345 N
232389 E 3802189 N
234826 E 3802487 N
239668 E 3800886 N
241299 E 3800580 N
242381 E 3799348 N
241238 E 3797601 N
240974 E 3795652 N
240372 E 3794166 N
237069 E 3794485 N
235299 E 3791225 N
to closure at starting point
233694 E 3789333 N

BILLING CODE 4310–55–P

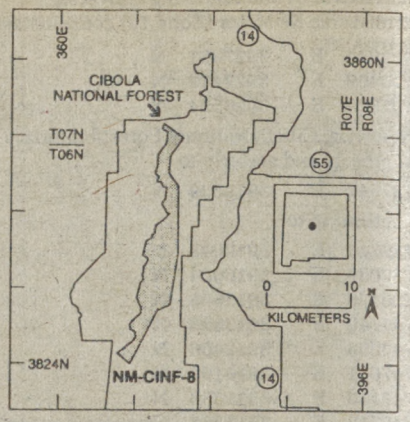


BILLING CODE 4310–55–C

NM–CINF–7. From Bureau of Land Management maps: Magdalena 1979, Quemado 1983. The perimeter of critical habitat unit NM–CINF–7 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

232448 E 3786183 N
230360 E 3785133 N
229997 E 3783775 N
231743 E 3780822 N
229360 E 3778238 N
following U.S. Forest Service boundary westerly within the following Zone 12 coordinates to
776732 E 3778451 N
continuing to
775665 E 3778404 N
775543 E 3783187 N
776562 E 3784232 N
continuing within the following Zone 13 coordinates
225252 E 3786042 N
226623 E 3788271 N
226405 E 3789318 N
227373 E 3790904 N
227724 E 3792466 N
228789 E 3793102 N
229298 E 3791309 N
229993 E 3789838 N
231006 E 3788742 N
232187 E 3787061 N
to closure at starting point
232448 E 3786183 N

BILLING CODE 4310–55–P

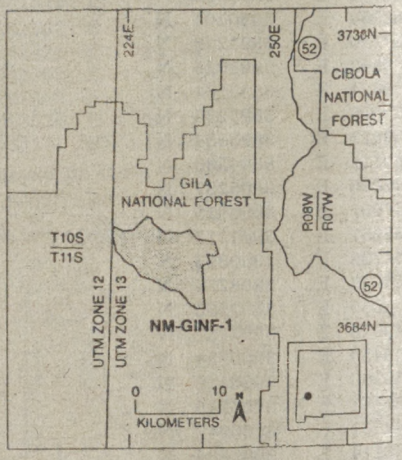


BILLING CODE 4310–55–C

NM–CINF–8. From Bureau of Land Management map: Belen 1979. The perimeter of critical habitat unit NM–CINF–8 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

372294 E 3852417 N
374560 E 3850733 N
373057 E 3848633 N
372867 E 3846596 N
374025 E 3844989 N
374048 E 3837030 N
373117 E 3830960 N
371652 E 3830349 N
368404 E 3823949 N
366889 E 3825215 N
following Manzano Mountain Wilderness boundary northerly, to closure at starting point
372294 E 3852417 N

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BILLING CODE 4310–55–C

NM–GINF–1. From Bureau of Land Management map: Truth or Consequences 1979. The perimeter of critical habitat unit NM–GINF–1 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

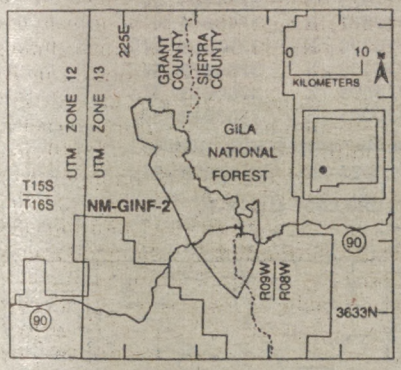
227246 E 3692991 N
226036 E 3693436 N
224741 E 3695314 N
223084 E 3696187 N

222426	E	3697234	N
221696	E	3697888	N
221075	E	3700545	N
221153	E	3702403	N
222967	E	3701587	N
224762	E	3701753	N
227142	E	3704031	N
227975	E	3703849	N
228246	E	3702923	N
230609	E	3700973	N
231127	E	3701219	N
233320	E	3701083	N
234824	E	3701658	N
235970	E	3700071	N
239278	E	3699484	N
239845	E	3697340	N
239212	E	3696908	N
237899	E	3697158	N
238480	E	3695744	N
237056	E	3695148	N
237418	E	3687585	N

following Aldo Leopold Wilderness boundary westerly, to closure at starting point

227246	E	3692991	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

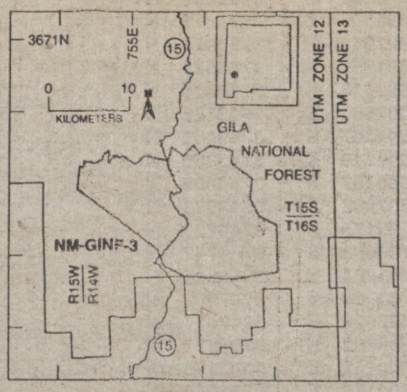
NM–GINF–2. From Bureau of Land Management map: Truth or Consequences 1979; U.S. Geological Survey map: Hatch 1982. The perimeter of critical habitat unit NM–GINF–2 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

243674	E	3648731	N
243840	E	3642951	N
242907	E	3639333	N
240692	E	3635006	N
238397	E	3637045	N
234280	E	3642720	N
231963	E	3647861	N
228470	E	3653582	N
228805	E	3654839	N
229631	E	3656014	N
226906	E	3657161	N
226043	E	3661310	N

following Aldo Leopold Wilderness boundary easterly and southerly, to closure at starting point

243674	E	3648731	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

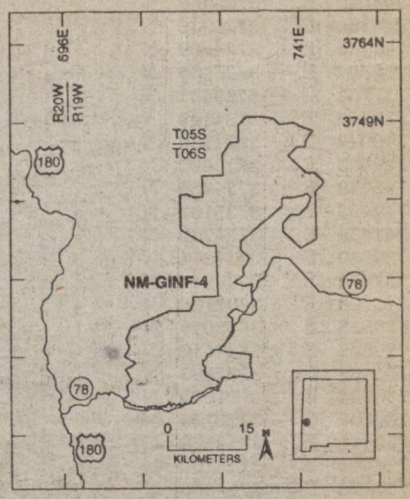
NM–GINF–3. From Bureau of Land Management map: Silver City 1978; U.S. Geological Survey map: Mogollon Mountains 1985. The perimeter of critical habitat unit NM–GINF–3 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

756670	E	3656420	N
759557	E	3655742	N
760033	E	3657581	N
761454	E	3656483	N
762784	E	3657818	N
763467	E	3656815	N
764773	E	3657807	N
766662	E	3657511	N
767681	E	3656891	N
767427	E	3655643	N
770132	E	3653646	N
769811	E	3651229	N
770949	E	3649029	N
773181	E	3647939	N
773366	E	3642021	N
767591	E	3641092	N
761688	E	3641426	N
759088	E	3642713	N
758312	E	3644755	N
748259	E	3652313	N
748561	E	3655206	N

following Gila Wilderness boundary northerly, to closure at starting point

756670	E	3656420	N

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BILLING CODE 4310–55–C

NM–GINF–4. From Bureau of Land Management map: Tularosa Mountains 1983; U.S. Geological Survey map: Mogollon Mountains 1985. The perimeter of critical habitat unit NM–GINF–4 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

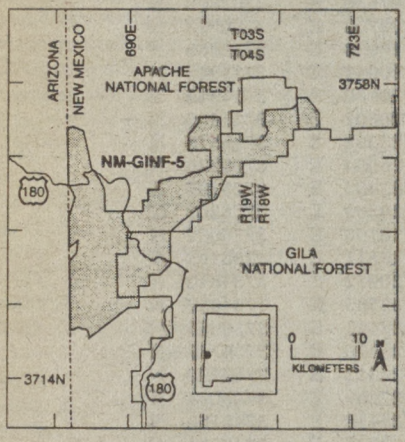
710738	E	3693704	N
707492	E	3694401	N
707147	E	3695974	N
708298	E	3696601	N
707882	E	3698481	N
708830	E	3699576	N
707626	E	3701634	N
709634	E	3702785	N
707437	E	3704115	N
708437	E	3705741	N
707830	E	3707389	N
708799	E	3709723	N
716198	E	3712868	N
720041	E	3712826	N
720685	E	3714349	N
720602	E	3715469	N
725393	E	3715575	N
725064	E	3725226	N
723469	E	3725197	N
718303	E	3728267	N
718166	E	3735009	N
719511	E	3735193	N
720912	E	3734640	N
722565	E	3734690	N
722441	E	3738685	N
726410	E	3738767	N
726312	E	3742799	N
727869	E	3745094	N
729419	E	3745166	N
729337	E	3748321	N
730884	E	3749948	N
733505	E	3749986	N
736049	E	3749684	N
737270	E	3748486	N
739939	E	3748862	N
741644	E	3747936	N
743642	E	3747242	N
742368	E	3745341	N
742148	E	3744049	N
740541	E	3744043	N
738977	E	3742407	N
742311	E	3739237	N
743907	E	3739257	N
745577	E	3737680	N
745598	E	3737126	N

744040 E 3735441 N
744250 E 3726363 N
741163 E 3724669 N
737809 E 3727859 N
737763 E 3729485 N
739298 E 3731149 N
740920 E 3731168 N
742523 E 3732800 N
743149 E 3734428 N
742493 E 3735182 N
741834 E 3734799 N
739589 E 3734371 N
737671 E 3734344 N
737706 E 3732736 N
729838 E 3726016 N
729842 E 3724410 N
731483 E 3722863 N
730894 E 3721686 N
730202 E 3720748 N
730414 E 3719559 N
728542 E 3718160 N
730190 E 3717580 N
731982 E 3717864 N
731796 E 3716429 N
731989 E 3714661 N
730523 E 3712337 N
728691 E 3713118 N
727278 E 3711891 N
728205 E 3711469 N
728194 E 3709063 N
726768 E 3706664 N
725549 E 3705332 N
726937 E 3704935 N
731666 E 3704432 N
731527 E 3702470 N
731961 E 3699879 N

following Gila Wilderness boundary, to closure at starting point

710738 E 3693704 N

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NM–GINF–5. From Bureau of Land Management maps: Tularosa Mountains 1983, Nutrioso 1981. The perimeter of critical habitat unit NM–GINF–5 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

680687 E 3751224 N
681588 E 3751457 N
683085 E 3750838 N
683915 E 3747375 N
684288 E 3745256 N
685471 E 3743719 N
686281 E 3742097 N
686355 E 3738872 N
691943 E 3738957 N
691881 E 3740525 N
692678 E 3740510 N
692660 E 3742122 N
694267 E 3742162 N
694249 E 3743306 N
696187 E 3743906 N
697882 E 3743923 N
699475 E 3744723 N
700308 E 3744747 N
701905 E 3745616 N
701838 E 3747997 N
698628 E 3747911 N
698592 E 3750374 N
700151 E 3752193 N
700159 E 3752946 N
703344 E 3752960 N
703394 E 3750484 N
706624 E 3750565 N
706649 E 3749371 N
708887 E 3749430 N
709534 E 3749610 N
710366 E 3750942 N
709837 E 3752155 N
709930 E 3754040 N
713873 E 3754237 N
714660 E 3754953 N
714595 E 3755833 N
716102 E 3755947 N
717947 E 3753626 N
718022 E 3751231 N
714117 E 3751122 N
714169 E 3749548 N
713317 E 3749528 N
713352 E 3747161 N
711747 E 3747122 N
711747 E 3746300 N
706718 E 3746180 N
706759 E 3744096 N
704235 E 3744048 N
702863 E 3740782 N
700304 E 3739559 N
696009 E 3735892 N
696099 E 3731074 N
694513 E 3729451 N
692903 E 3729394 N
692941 E 3727789 N
691336 E 3727756 N
691407 E 3724553 N
689835 E 3724521 N
684080 E 3720000 N

following Apache National Forest/Blue Ridge Primitive Area boundary northerly and westerly to

681230 E 3721161 N

following Arizona/New Mexico state line northerly to

681051 E 3731419 N

continuing to

682068 E 3732668 N
682306 E 3734452 N
681013 E 3733458 N

following Arizona/New Mexico state line northerly to

680944 E 3737931 N

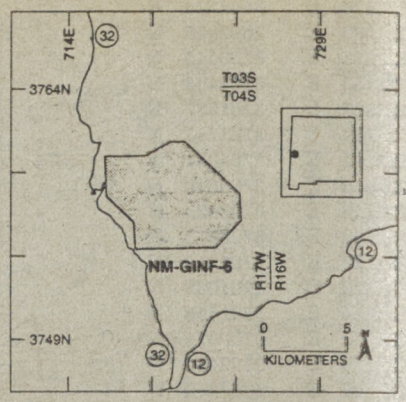
continuing to

681864 E 3740897 N
680858 E 3742988 N

following Arizona/New Mexico state line northerly to closure at starting point

680687 E 3751224 N

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BILLING CODE 4310–55–C

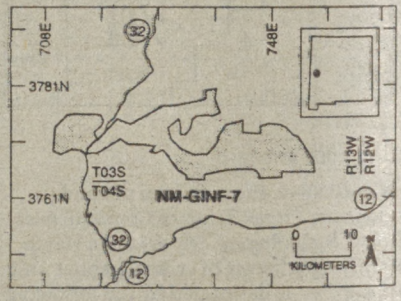
NM–GINF–6. From Bureau of Land Management map: Tularosa Mountains 1983. The perimeter of critical habitat unit NM–GINF–6 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

720925 E 3760853 N
724210 E 3757733 N
724311 E 3756135 N
722797 E 3754495 N
717979 E 3754400 N
717877 E 3756004 N
716236 E 3757559 N
716159 E 3759973 N
718598 E 3760013 N
720045 E 3760846 N

to closure at starting point

720925 E 3760853 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

NM–GINF–7. From Bureau of Land Management maps: Tularosa Mountains 1983, Quemado 1983. The perimeter of critical habitat unit NM–GINF–7 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

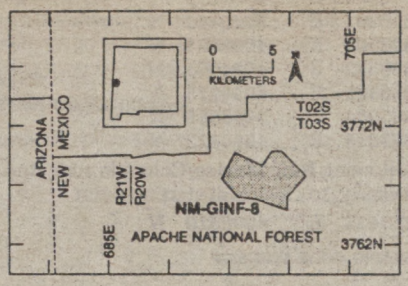
738241 E 3780533 N
737952 E 3778690 N
738926 E 3776213 N
737534 E 3775620 N
736520 E 3775778 N
734828 E 3775662 N
734037 E 3775006 N
733723 E 3773516 N
732788 E 3772320 N
731868 E 3772300 N
731845 E 3773902 N
731600 E 3775079 N
729716 E 3773572 N

730266 E 3771527 N
731945 E 3769867 N
734188 E 3768856 N
736661 E 3768903 N
738398 E 3770989 N
738545 E 3772114 N
739905 E 3774114 N
742935 E 3774918 N
742877 E 3772818 N
746031 E 3772568 N
745867 E 3773829 N
747508 E 3774341 N
749603 E 3774138 N
750584 E 3773590 N
751811 E 3772291 N
752654 E 3772010 N
755481 E 3767732 N
755636 E 3765608 N
749795 E 3765645 N
749835 E 3764703 N
745770 E 3764534 N
745752 E 3765153 N
745632 E 3765388 N
744860 E 3766116 N
742852 E 3766230 N
740090 E 3765997 N
736136 E 3765204 N
736163 E 3764316 N
732899 E 3764342 N
732895 E 3765124 N
731496 E 3765935 N
728823 E 3769574 N
727510 E 3768996 N
726528 E 3769320 N
727372 E 3770224 N
725318 E 3770476 N
722499 E 3770582 N
721357 E 3771515 N
717195 E 3768959 N
716272 E 3769035 N
715046 E 3768753 N
714289 E 3769502 N
712720 E 3769645 N
710681 E 3768741 N
709377 E 3769391 N
709687 E 3773619 N
711909 E 3775857 N
713558 E 3776052 N
715070 E 3775933 N
716865 E 3775968 N
717817 E 3775839 N
718331 E 3774749 N
717917 E 3773789 N
716686 E 3772780 N
717203 E 3771225 N
719147 E 3773505 N
720704 E 3775125 N
723073 E 3774193 N
728826 E 3777485 N
731039 E 3777549 N
736299 E 3778663 N
736285 E 3780237 N

to closure at starting point

738241 E 3780533 N

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BILLING CODE 4310–55–C

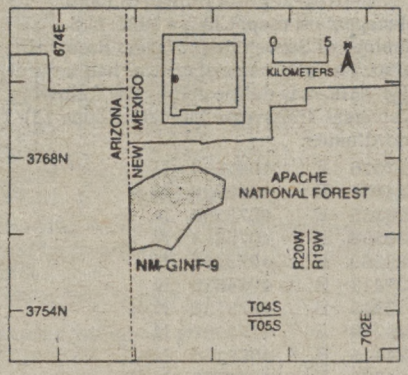
NM–GINF–8. From Bureau of Land Management map: Quemado 1983. The perimeter of critical habitat unit NM–GINF–8 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

699349 E 3769883 N
701397 E 3767767 N
699843 E 3765989 N
699866 E 3764900 N
697231 E 3765840 N
695747 E 3766003 N
694401 E 3767557 N
695492 E 3769729 N
697764 E 3768661 N
698582 E 3769866 N

to closure at starting point

699349 E 3769883 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

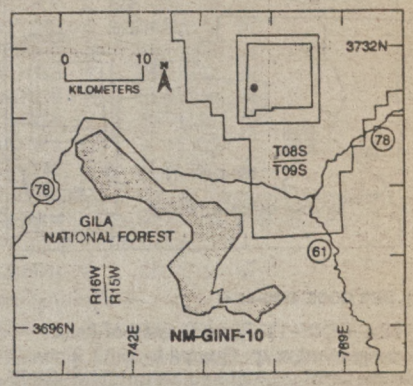
NM–GINF–9. From Bureau of Land Management maps: Tularosa Mountains 1983, Nutrioso 1981, Springerville 1981, Quemado 1983. The perimeter of critical habitat unit NM–GINF–9 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

680425 E 3765075 N
681995 E 3766076 N
683665 E 3766926 N
686614 E 3767174 N
689171 E 3765921 N
688920 E 3763755 N
686612 E 3762719 N
685582 E 3761303 N
684328 E 3759560 N
682991 E 3760022 N
680539 E 3759491 N

following Arizona/New Mexico state line northerly, to closure at starting point

680425 E 3765075 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

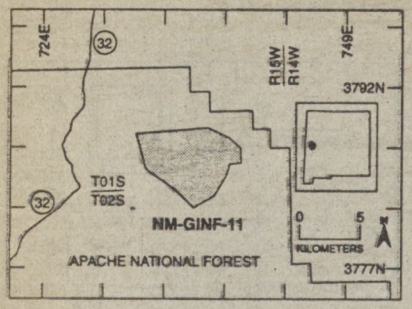
NM–GINF–10. From Bureau of Land Management map: Tularosa Mountains 1983; U.S. Geological Survey map: Mogollon Mountains 1985. The perimeter of critical habitat unit NM–GINF–10 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

750246 E 3697436 N
748558 E 3698004 N
747824 E 3701836 N
746485 E 3703842 N
749650 E 3707137 N
749617 E 3708753 N
747969 E 3710319 N
746737 E 3710563 N
745435 E 3710450 N
743455 E 3712177 N
740609 E 3712851 N
738290 E 3712431 N
736947 E 3714722 N
735538 E 3716268 N
735835 E 3717416 N
734950 E 3718094 N
734862 E 3719708 N
738013 E 3721371 N
746264 E 3713497 N
748789 E 3713528 N
750382 E 3711943 N
752742 E 3711985 N
754394 E 3710407 N
756004 E 3710430 N
756068 E 3708178 N
752878 E 3703669 N
752241 E 3700230 N
753552 E 3700770 N
753320 E 3699139 N
755501 E 3699209 N
758405 E 3700696 N
760153 E 3701219 N
761559 E 3699810 N
760589 E 3698782 N

following Gila Wilderness boundary westerly, to closure at starting point

750246 E 3697436 N

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BILLING CODE 4310-55-C

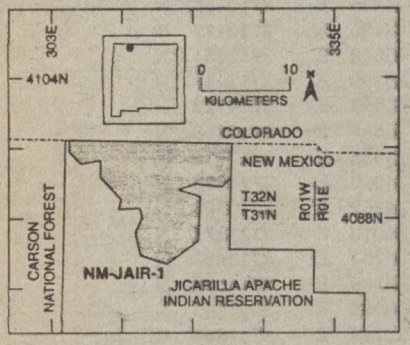
NM-GINF-11. From Bureau of Land Management map: Quemado 1983. The perimeter of critical habitat unit NM-GINF-11 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

737598	E	3788618	N
739320	E	3787807	N
740304	E	3786918	N
740335	E	3785728	N
739398	E	3785610	N
739136	E	3784674	N
738126	E	3782980	N
736428	E	3781994	N
734832	E	3783540	N
732466	E	3785217	N
731678	E	3788124	N
737598	E	3788618	N

to closure at starting point

737598 E 3788618 N

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

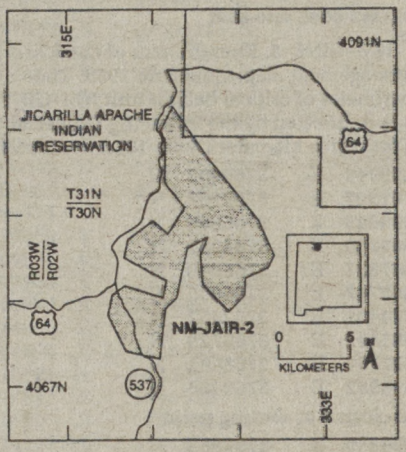
NM-JAIR-1. From Bureau of Land Management map: Chama 1981; U.S. Geological Survey map: Navajo Reservoir 1980. The perimeter of critical habitat unit NM-JAIR-1 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

323436	E	4096510	N
323285	E	4092583	N
322301	E	4091584	N
319396	E	4091929	N
317373	E	4091275	N
319853	E	4090475	N
319627	E	4085437	N
316075	E	4082792	N
313056	E	4083780	N
312482	E	4086353	N
313238	E	4088098	N
312969	E	4089153	N
310604	E	4089019	N
310861	E	4090180	N
308563	E	4092661	N
308532	E	4094605	N
306325	E	4094215	N
305004	E	4095589	N
305014	E	4096922	N

following New Mexico/Colorado state line easterly, to closure at starting point

323436 E 4096510 N

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

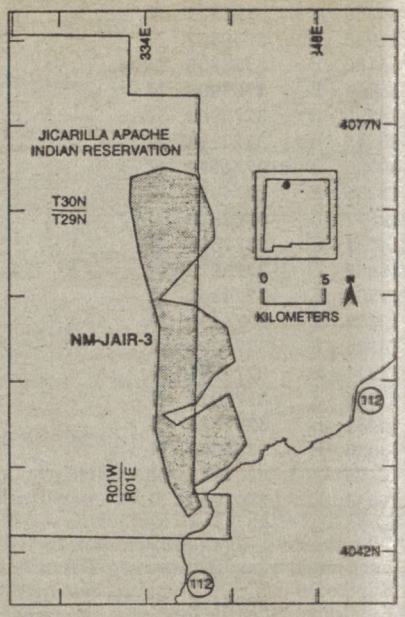
NM-JAIR-2. From Bureau of Land Management map: Chama 1981; U.S. Geological Survey map: Navajo Reservoir 1980. The perimeter of critical habitat unit NM-JAIR-2 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

322376	E	4086554	N
324865	E	4082920	N
328355	E	4078560	N
329398	E	4076124	N
328989	E	4075236	N
327413	E	4074516	N
327345	E	4073330	N
326229	E	4072162	N
324415	E	4074125	N
324261	E	4076165	N
324780	E	4077386	N
323364	E	4076578	N
322624	E	4073173	N
321838	E	4072409	N
321454	E	4068884	N
319077	E	4069437	N
317828	E	4071971	N
318127	E	4073381	N
319002	E	4074018	N
321666	E	4073171	N
321902	E	4074363	N
318953	E	4075990	N
319229	E	4077280	N
321004	E	4078572	N
322018	E	4077646	N
323173	E	4079464	N
321801	E	4081240	N
321854	E	4084214	N
321542	E	4084884	N

to closure at starting point

322376 E 4086554 N

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

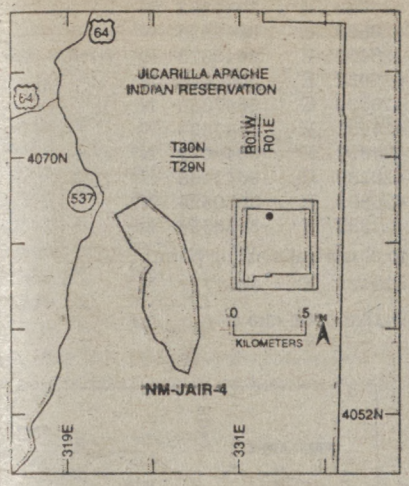
NM-JAIR-3. From Bureau of Land Management map: Chama 1981. The perimeter of critical habitat unit NM-JAIR-3 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

335667	E	4073457	N
338132	E	4072853	N
339514	E	4069419	N
339603	E	4067557	N
335143	E	4062658	N
337882	E	4062197	N
340622	E	4060353	N
341258	E	4057555	N
339561	E	4056358	N
338133	E	4054106	N
335377	E	4053224	N
336526	E	4052345	N
340834	E	4054923	N
342209	E	4050785	N
340748	E	4048959	N
337860	E	4047289	N
338489	E	4045735	N
337405	E	4044841	N
335857	E	4047521	N
334780	E	4051863	N
335100	E	4060490	N
333554	E	4065934	N
332703	E	4070652	N
332794	E	4072700	N

to closure at starting point

335667 E 4073457 N

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BILLING CODE 4310–55–C

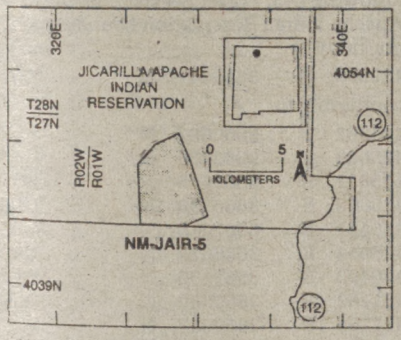
NM–JAIR–4. From Bureau of Land Management map: Chama 1981. The perimeter of critical habitat unit NM–JAIR–4 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

324398	E	4067152	N
326882	E	4064967	N
328061	E	4061159	N
328251	E	4057390	N
327436	E	4054823	N
326501	E	4055210	N
325787	E	4056796	N
325106	E	4057286	N
324238	E	4059464	N
324457	E	4061826	N
324887	E	4062416	N
323464	E	4063674	N
322348	E	4065939	N

to closure at starting point

324398	E	4067152	N

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BILLING CODE 4310–55–C

NM–JAIR–5. From Bureau of Land Management map: Chama 1981. The perimeter of critical habitat unit NM–JAIR–5 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

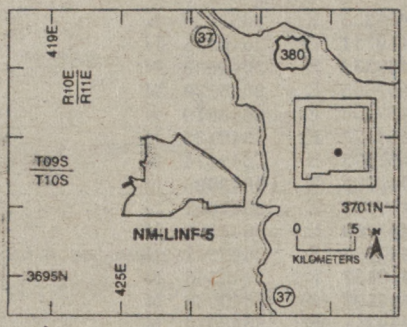
325983	E	4043299	N
325799	E	4047542	N
327027	E	4048951	N
328681	E	4049732	N
329458	E	4047895	N
330693	E	4043974	N
328974	E	4043226	N

following U.S. Forest Service/Jicarilla Apache Indian Reservation boundary westerly, to closure at starting point

325983	E	4043299	N

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BILLING CODE 4310–55–C



BILLING CODE 4310–55–C

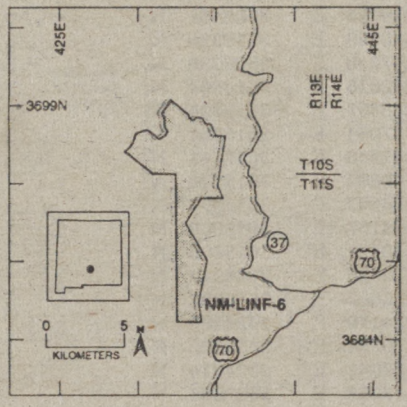
NM–LINF–5. From Bureau of Land Management maps: Carrizozo 1981, Ruidoso 1984. The perimeter of critical habitat unit NM–LINF–5 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

429929	E	3707361	N
430974	E	3706475	N
433146	E	3705055	N
435712	E	3702881	N
435586	E	3701025	N
433906	E	3701017	N
432420	E	3700796	N
432425	E	3701372	N
432056	E	3701390	N
432044	E	3701611	N
430880	E	3701585	N
430334	E	3700912	N
429208	E	3700196	N
425056	E	3700219	N

following White Mountain Wilderness boundary northerly, to closure at starting point

429929	E	3707361	N

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BILLING CODE 4310–55–C

NM–LINF–6. From Bureau of Land Management map: Ruidoso 1984. The perimeter of critical habitat unit NM–LINF–6 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

435588	E	3697059	N
435085	E	3693876	N
435440	E	3693042	N
434048	E	3693027	N
433038	E	3691438	N
434424	E	3689097	N
433884	E	3686390	N
434055	E	3685107	N

following U.S. Forest Service/Mescalero Apache Indian Reservation boundary westerly and northerly to

430970	E	3694616	N

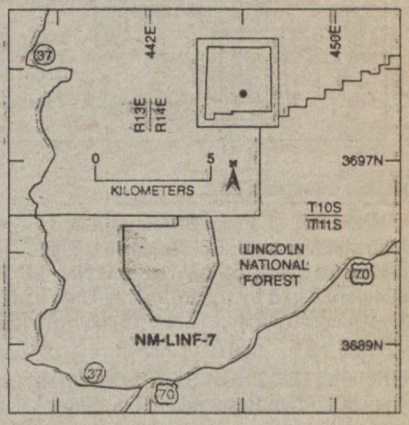
continuing to

429148	E	3696049	N

following White Mountain Wilderness boundary easterly, to closure at starting point

435588	E	3697058	N

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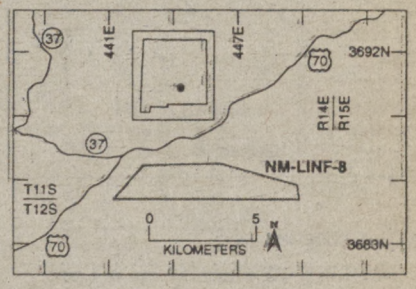
NM–LINF–7. From Bureau of Land Management map: Ruidoso 1984. The perimeter of critical habitat unit NM–LINF–7 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

444627	E	3694587	N
444963	E	3692463	N
443884	E	3689886	N
442220	E	3690011	N
440841	E	3692170	N

following U.S. Forest Service boundary northerly and easterly, to closure at starting point

444627	E	3694587	N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

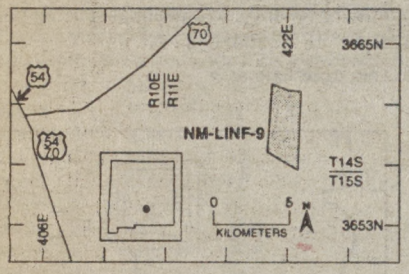
NM–LINF–8. From Bureau of Land Management map: Ruidoso 1984. The perimeter of critical habitat unit NM–LINF–8 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

441208 E 3685087 N
442610 E 3686696 N
446208 E 3686789 N
449781 E 3685793 N
449873 E 3685085 N

following U.S. Forest Service/Mescalero Apache Indian Reservation boundary westerly, to closure at starting point

441208 E 3685087 N

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BILLING CODE 4310–55–C

NM–LINF–9. From Bureau of Land Management map: Ruidoso 1984. The perimeter of critical habitat unit NM–LINF–9 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

422885 E 3661841 N

following U.S. Forest Service/Mescalero Apache Indian Reservation boundary southerly to

422696 E 3656656 N

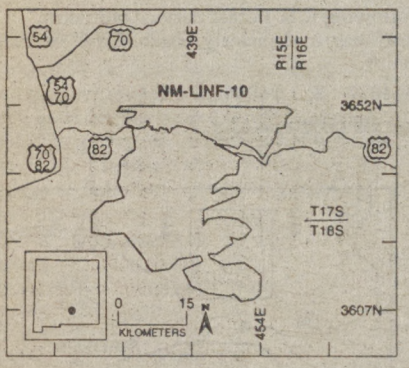
continuing to

420674 E 3657841 N
420976 E 3662334 N
422042 E 3661924 N

to closure at starting point

422885 E 3661841 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

NM–LINF–10. From Bureau of Land Management map: Alamagordo 1979. The perimeter of critical habitat unit NM–LINF–10 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

423475 E 3651777 N

following U.S. Forest Service/Mescalero Apache Indian Reservation boundary easterly to

459692 E 3651601 N

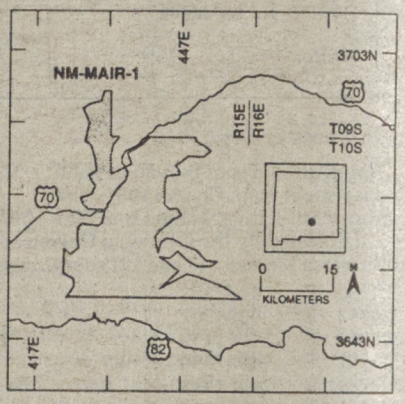
continuing to

461238 E 3650529 N
459711 E 3649235 N
459339 E 3646933 N
457665 E 3646778 N
457298 E 3644819 N
454473 E 3640133 N
452673 E 3642274 N
449968 E 3643695 N
449121 E 3642361 N
447266 E 3643085 N
444068 E 3643547 N
450137 E 3640358 N
449297 E 3640058 N
449241 E 3638014 N
448839 E 3636791 N
446556 E 3636596 N
443734 E 3634233 N
443568 E 3632653 N
445952 E 3633902 N
447566 E 3633670 N
448700 E 3634027 N
449527 E 3633605 N
449138 E 3632139 N
441637 E 3628906 N
441611 E 3625625 N
442344 E 3627004 N
445558 E 3627554 N
448788 E 3627177 N
450818 E 3625979 N
452113 E 3624673 N
450622 E 3622950 N
449195 E 3622371 N
447536 E 3622937 N
448043 E 3621640 N
446317 E 3620595 N
444497 E 3619223 N
442757 E 3619314 N
443018 E 3618537 N
446011 E 3616952 N
450423 E 3617450 N
452394 E 3616127 N
454239 E 3614523 N
454026 E 3610388 N
452510 E 3609246 N
449762 E 3608801 N
448193 E 3610370 N
447280 E 3609998 N
442616 E 3610564 N
438867 E 3612224 N
437084 E 3615801 N
441386 E 3617711 N
440897 E 3618846 N
436049 E 3618073 N
434167 E 3615969 N
430432 E 3615405 N
429333 E 3616347 N
428683 E 3618072 N
424170 E 3623783 N
420554 E 3623508 N
417063 E 3624014 N
417057 E 3627961 N
420091 E 3630901 N
421962 E 3631091 N
424111 E 3631806 N
422738 E 3635103 N
423224 E 3636754 N
423290 E 3639799 N
424699 E 3641183 N
426539 E 3642238 N
426450 E 3643673 N
425958 E 3646416 N
426230 E 3647258 N
424492 E 3647829 N
424652 E 3649071 N
426230 E 3649495 N
426863 E 3650524 N
422683 E 3650656 N

to closure at starting point

423475 E 3651777 N

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BILLING CODE 4310–55–C

NM–MAIR–1. From Bureau of Land Management map: Ruidoso 1984. The perimeter of critical habitat unit NM–MAIR–1 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

423475 E 3651777 N
424955 E 3654104 N
424848 E 3655529 N
422696 E 3656656 N

following U.S. Forest Service/Mescalero Apache Indian Reservation boundary northerly to

422885 E 3661841 N

continuing to

424202 E 3660687 N
425893 E 3662066 N
425631 E 3663475 N
425669 E 3666138 N
426481 E 3667018 N
429954 E 3666677 N
430590 E 3667196 N
431262 E 3669899 N
427795 E 3669957 N
426624 E 3671110 N
426240 E 3672465 N
428451 E 3673174 N
429195 E 3674841 N
428353 E 3676009 N
427882 E 3677105 N
429472 E 3678047 N
429117 E 3680642 N
428269 E 3683322 N
427038 E 3684005 N
427902 E 3687915 N
426579 E 3690960 N
427965 E 3691830 N
430375 E 3692539 N
430970 E 3694616 N

following U.S. Forest Service/Mescalero Apache Indian Reservation boundary easterly and southerly to

434055 E 3685107 N

continuing to

434166 E 3684978 N
432867 E 3683321 N
432376 E 3680891 N
432542 E 3677404 N
436620 E 3679464 N
435800 E 3681693 N
438435 E 3683245 N
440379 E 3685094 N

following U.S. Forest Service/Mescalero Apache Indian Reservation boundary easterly to

449873 E 3685085 N

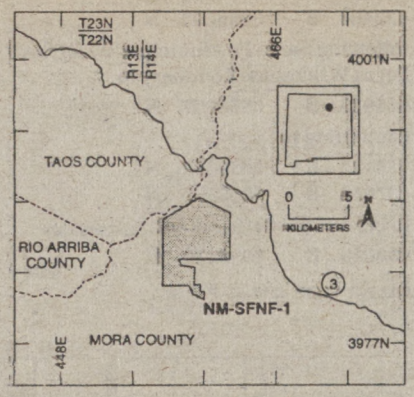
continuing to

450001 E 3684260 N
451634 E 3683321 N
453093 E 3682248 N
451492 E 3680951 N
448324 E 3681060 N
445815 E 3679056 N
446413 E 3678282 N
446653 E 3677275 N
443824 E 3676930 N
443580 E 3675114 N
443522 E 3671062 N
444585 E 3670120 N
446091 E 3670304 N
447125 E 3668941 N
445351 E 3667907 N
442492 E 3665497 N
441720 E 3664362 N
441942 E 3662561 N
442367 E 3661186 N
442792 E 3663243 N
443910 E 3664087 N
445304 E 3663992 N
447718 E 3662651 N
450237 E 3661696 N
452182 E 3659566 N
454540 E 3659338 N
453332 E 3658390 N
450734 E 3658204 N
448531 E 3659303 N
446359 E 3661380 N
444703 E 3659917 N
442839 E 3660200 N
446649 E 3657316 N
443076 E 3653919 N
448276 E 3656734 N
450382 E 3656263 N
455950 E 3654129 N
459692 E 3651601 N

following U.S. Forest Service/Mescalero Apache Indian Reservation boundary westerly, to closure at starting point

423475 E 3651777 N

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BILLING CODE 4310–55–C

NM–SFNF–1. From Bureau of Land Management maps: Taos 1983, Santa Fe 1983. The perimeter of critical habitat unit NM–SFNF–1 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

459603 E 3989359 N
462162 E 3988055 N
462144 E 3984108 N
457879 E 3984125 N
458067 E 3983618 N
459215 E 3983451 N
459161 E 3981963 N
459673 E 3981967 N
459659 E 3981383 N
460011 E 3981385 N
459996 E 3980709 N
459026 E 3981163 N
458732 E 3981865 N

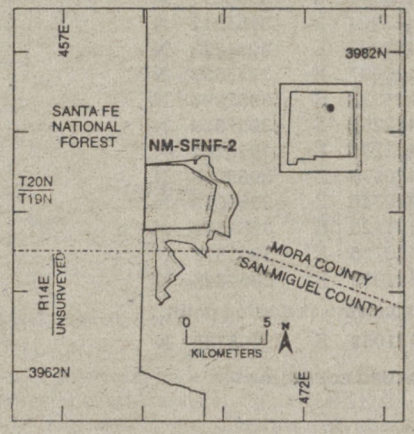
following Pecos Wilderness boundary westerly and northerly to

456533 E 3987490 N

to closure at starting point

459603 E 3989359 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

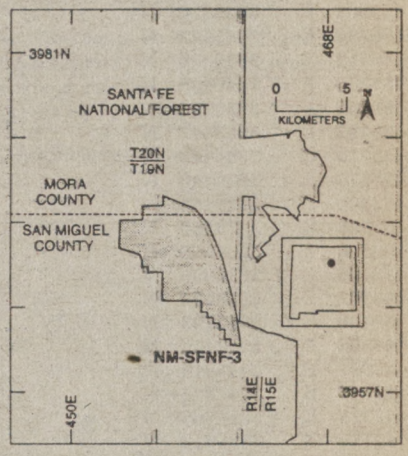
NM–SFNF–2. From Bureau of Land Management map: Santa Fe 1983. The perimeter of critical habitat unit NM–SFNF–2 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

462127 E 3974981 N
464563 E 3974959 N
466567 E 3973709 N
466063 E 3970997 N
462056 E 3970885 N

to closure at starting point

462127 E 3974981 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

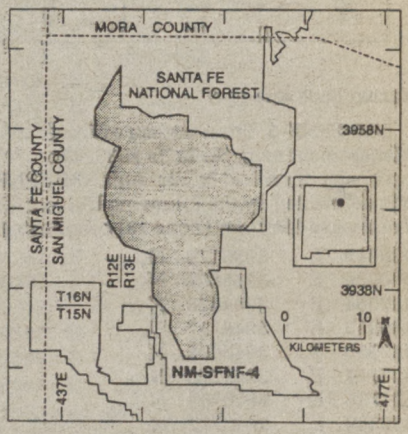
NM–SFNF–3. From Bureau of Land Management map: Santa Fe 1983. The perimeter of critical habitat unit NM–SFNF–3 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

456445 E 3970895 N
457360 E 3970528 N
458681 E 3969999 N
459601 E 3968938 N
460655 E 3966447 N
461569 E 3962796 N
461820 E 3960922 N
461894 E 3960248 N

following Pecos Wilderness boundary northerly, to closure at starting point

456445 E 3970895 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

NM–SFNF–4. From Bureau of Land Management map: Santa Fe 1983. The perimeter of critical habitat unit NM–SFNF–4 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

444193 E 3965889 N

following Pecos Wilderness boundary southerly and easterly to

461671 E 3953630 N

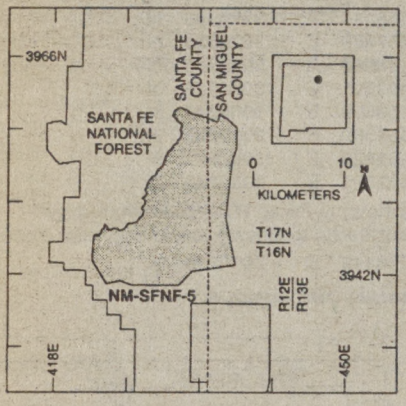
continuing to

461666 E 3950170 N
461395 E 3947425 N
459509 E 3945370 N
456780 E 3945429 N
456519 E 3940320 N
455236 E 3940408 N
456289 E 3938296 N
456492 E 3935847 N
455776 E 3934488 N
455870 E 3929148 N
452280 E 3929151 N
450396 E 3933165 N
450506 E 3934669 N
448260 E 3936999 N
448187 E 3938622 N
448400 E 3942233 N
444696 E 3943422 N
442971 E 3945914 N
442145 E 3947831 N
442373 E 3951765 N
444116 E 3955610 N
440937 E 3957180 N
440955 E 3960372 N

to closure at starting point

444193 E 3965889 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

NM–SFNF–5. From Bureau of Land Management map: Santa Fe 1983. The perimeter of critical habitat unit NM–SFNF–5 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

438049 E 3958179 N
438026 E 3955857 N
437554 E 3954428 N
436913 E 3948217 N
437959 E 3943008 N
433147 E 3942270 N
431736 E 3940769 N
426569 E 3940772 N
425310 E 3941242 N
423774 E 3940930 N
422185 E 3943518 N
422404 E 3946295 N

following Santa Fe Municipal Watershed/Pecos Wilderness boundary to

435933 E 3958807 N

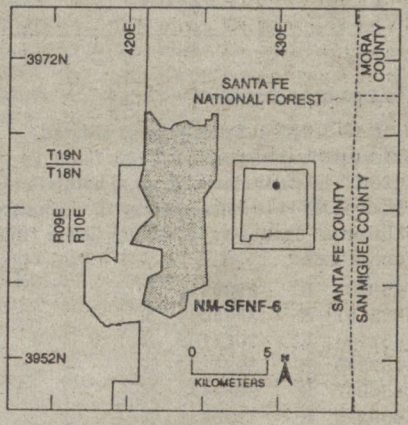
continuing to

436122 E 3959657 N
437016 E 3959087 N

to closure at starting point

438049 E 3958179 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

NM–SFNF–6. From Bureau of Land Management map: Santa Fe 1983. The perimeter of critical habitat unit NM–SFNF–6 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

421058 E 3968395 N

following Pecos Wilderness boundary easterly and southerly to

425846 E 3963983 N

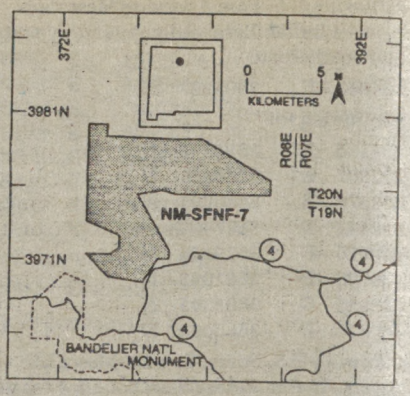
continuing to

425025 E 3962800 N
425291 E 3956951 N
424011 E 3956371 N
423884 E 3955312 N
422882 E 3954722 N
420997 E 3955637 N
421373 E 3957394 N
422252 E 3957819 N
422258 E 3959262 N
420178 E 3959646 N
420740 E 3960649 N
421723 E 3961569 N
420726 E 3963577 N
421022 E 3964846 N

to closure at starting point

421058 E 3968395 N

BILLING CODE 4310–55–C



BILLING CODE 4310–55–C

NM–SFNF–7. From Bureau of Land Management map: Los Alamos 1978. The perimeter of critical habitat unit NM–SFNF–7 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

373822 E 3980211 N

following Santa Fe National Forest/Santa Clara Indian Reservation boundary easterly to

379741 E 3979230 N

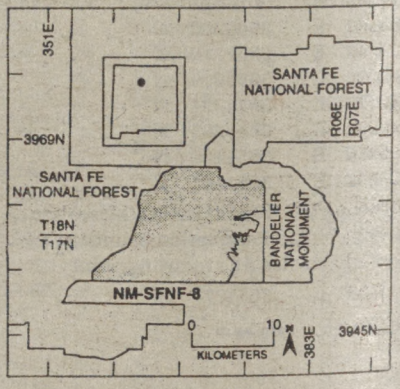
continuing to

381422 E 3979281 N
386072 E 3976487 N
386062 E 3975492 N
379724 E 3975496 N
378810 E 3975759 N
377143 E 3975463 N
379338 E 3971675 N
379315 E 3971092 N
378553 E 3971091 N
377564 E 3969510 N
375216 E 3969855 N
373753 E 3971408 N
375342 E 3971410 N
375940 E 3971821 N
375944 E 3972674 N
373740 E 3973632 N

following Santa Fe National Forest/Baca Location No. 1 Grant boundary northerly, to closure at starting point

373822 E 3980211 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

NM–SFNF–8. From Bureau of Land Management map: Los Alamos 1978. The

perimeter of critical habitat unit NM–SFNF–8 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

371967 E 3965563 N

following Bandelier National Monument boundary southerly and easterly to

377425 E 3960094 N

following Dome Wilderness boundary westerly and southerly to

374067 E 3953600 N

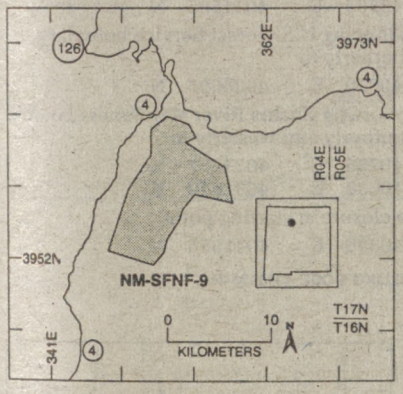
continuing to

372933 E 3951339 N
356407 E 3951624 N
356428 E 3952818 N
358775 E 3954869 N
360779 E 3955821 N
362179 E 3959973 N
361994 E 3961214 N
362397 E 3962785 N
363925 E 3962884 N
364990 E 3964827 N
366629 E 3965635 N

to closure at starting point

371967 E 3965563 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

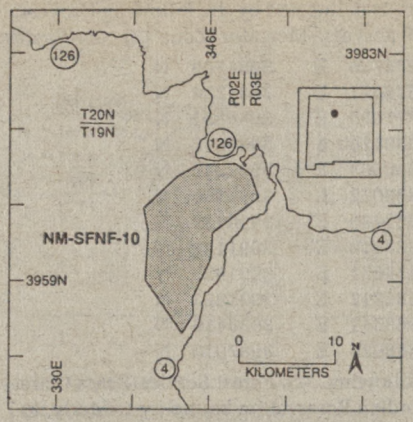
NM–SFNF–9. From Bureau of Land Management map: Los Alamos 1978. The perimeter of critical habitat unit NM–SFNF–9 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

352407 E 3965890 N
354489 E 3965123 N
355170 E 3963834 N
354200 E 3963366 N
357978 E 3960920 N
358700 E 3957484 N
355076 E 3958282 N
353902 E 3956822 N
353630 E 3955830 N
352431 E 3953923 N
352080 E 3952612 N
351070 E 3951418 N
346676 E 3952764 N
348666 E 3958781 N
350815 E 3962126 N
350849 E 3964641 N

to closure at starting point

352407 E 3965890 N

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BILLING CODE 4310–55–C

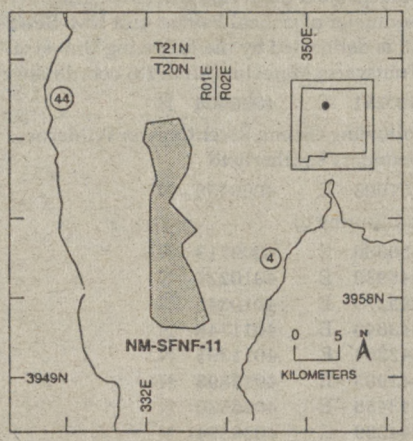
NM–SFNF–10. From Bureau of Land Management map: Los Alamos 1978. The perimeter of critical habitat unit NM–SFNF–10 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

348601 E 3971406 N
350172 E 3970354 N
351036 E 3967837 N
346306 E 3964081 N
346134 E 3961345 N
344273 E 3957215 N
344347 E 3955388 N
343184 E 3953453 N
339295 E 3959028 N
339565 E 3964179 N
339064 E 3966633 N
342542 E 3969957 N
344794 E 3971258 N

to closure at starting point

348601 E 3971406 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

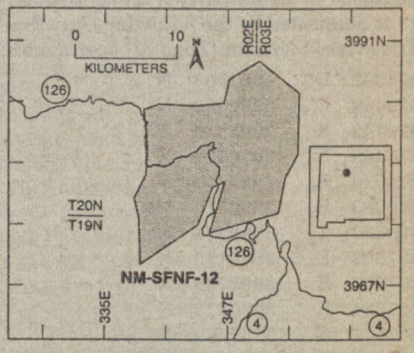
NM–SFNF–11. From Bureau of Land Management map: Los Alamos 1978. The perimeter of critical habitat unit NM–SFNF–11 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

332430 E 3964437 N
332438 E 3969669 N
333142 E 3971403 N
332379 E 3974766 N
331671 E 3975740 N
332036 E 3977725 N
335626 E 3978324 N
337059 E 3974907 N
336626 E 3972508 N
334537 E 3968898 N
337684 E 3965647 N
336016 E 3964131 N
336078 E 3962858 N
337358 E 3960544 N
339022 E 3955454 N
337494 E 3954499 N
333755 E 3954709 N
332510 E 3955822 N

following Santa Fe National Forest/Jemez Indian Reservation boundary northerly, to closure at starting point

332430 E 3964437 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

NM–SFNF–12. From Bureau of Land Management maps: Abiquiu 1978, Los Alamos 1978. The perimeter of critical habitat unit NM–SFNF–12 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

353953 E 3985893 N

following U.S. Forest Service/Baca Location No. 1 Grant boundary southerly to

353818 E 3979872 N

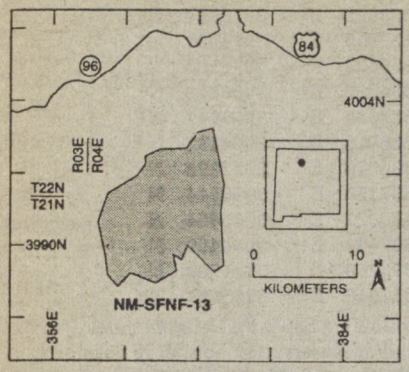
continuing to

352581 E 3977606 N
351926 E 3974146 N
345202 E 3972184 N
346644 E 3977227 N
345503 E 3976667 N
344060 E 3972939 N
338456 E 3969063 N
338310 E 3973729 N
337844 E 3975558 N
338987 E 3977882 N
339142 E 3980135 N
339034 E 3982328 N
338767 E 3984240 N
340292 E 3984786 N
343772 E 3984633 N
346581 E 3984921 N
347105 E 3987275 N
350042 E 3989050 N

to closure at starting point

353953 E 3985893 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

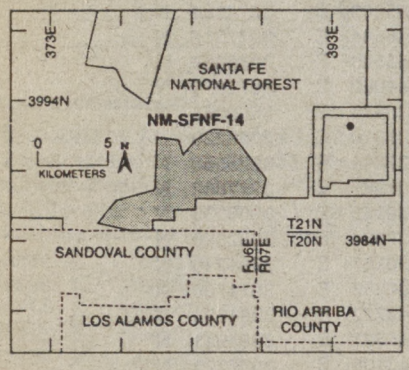
NM–SFNF–13. From Bureau of Land Management map: Abiquiu 1978. The perimeter of critical habitat unit NM–SFNF–13 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

371342	E	4001383	N
372449	E	3995952	N
372142	E	3993336	N
372449	E	3988079	N
371526	E	3987450	N
368993	E	3990010	N
368382	E	3988581	N
367593	E	3989136	N
367906	E	3987505	N
365884	E	3986333	N
363511	E	3987299	N
362271	E	3985991	N
361290	E	3987104	N
361050	E	3989047	N
360334	E	3992260	N
361286	E	3995038	N
364082	E	3996761	N
364928	E	3997946	N
364831	E	3998643	N
366275	E	3999321	N
368808	E	3999435	N
369924	E	4001017	N

to closure at starting point

371342 E 4001383 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

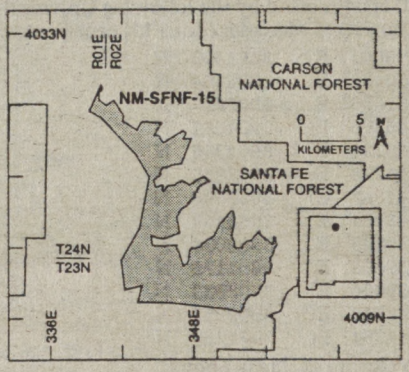
NM–SFNF–14. From Bureau of Land Management map: Abiquiu 1978. The perimeter of critical habitat unit NM–SFNF–14 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

378726	E	3984709	N
376371	E	3985234	N
377685	E	3986851	N
380428	E	3987616	N
380563	E	3991340	N
382072	E	3991166	N
382420	E	3990122	N
383310	E	3991142	N
384521	E	3991933	N
385712	E	3991823	N
388341	E	3988416	N
388025	E	3987010	N

following U.S. Forest Service/Santa Clara Indian Reservation boundary westerly, to closure at starting point

378726 E 3984709 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

NM–SFNF–15. From Bureau of Land Management map: Abiquiu 1978. The perimeter of critical habitat unit NM–SFNF–15 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

340251 E 4028608 N

following Chama River Canyon Wilderness boundary southerly to

351903 E 4009458 N

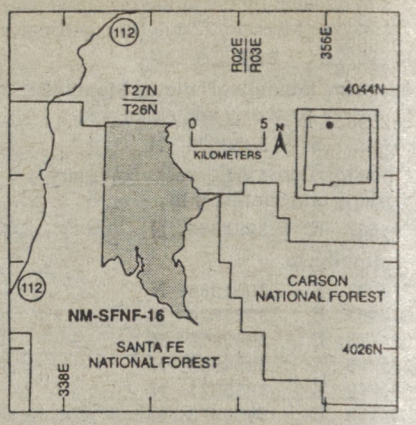
continuing to

350806	E	4009713	N
345939	E	4010277	N
343275	E	4010345	N
343649	E	4011748	N
342204	E	4011395	N
341903	E	4013893	N
343458	E	4016580	N
344289	E	4020894	N
343171	E	4022755	N
340253	E	4025887	N
339283	E	4026458	N

to closure at starting point

340251 E 4028608 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

NM–SFNF–16. From Bureau of Land Management maps: Abiquiu 1978, Chama 1981. The perimeter of critical habitat unit NM–SFNF–16 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

340889	E	4041655	N
345585	E	4041565	N

following U.S. Forest Service boundary southerly to

349070 E 4036697 N

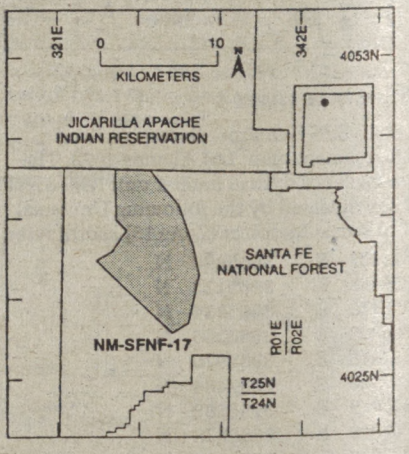
following Chama River Wilderness boundary southerly and westerly to

340785	E	4031637	N
340638	E	4031640	N

to closure at starting point

340889 E 4041655 N

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

NM–SFNF–17. From Bureau of Land Management maps: Abiquiu 1978, Chama 1981. The perimeter of critical habitat unit NM–SFNF–17 is delineated by the following Universal Transverse Mercator (Zone 13) coordinates:

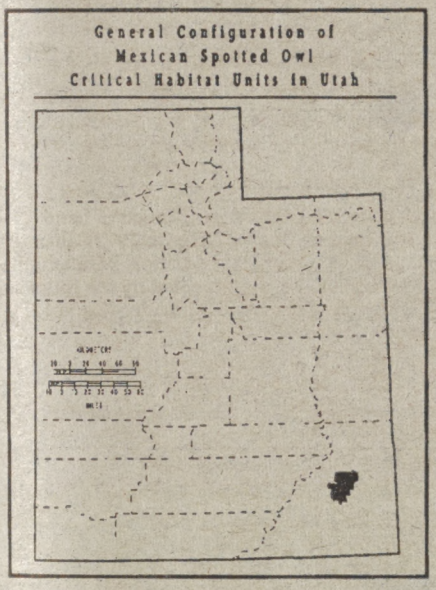
328974	E	4043226	N
331420	E	4040209	N
332662	E	4036576	N
333170	E	4034120	N

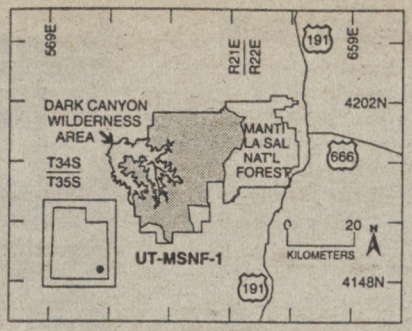
332259 E 4029926 N
330852 E 4029054 N
324367 E 4035344 N
325697 E 4036137 N
326952 E 4037970 N
326061 E 4038902 N
325983 E 4043299 N

following U.S. Forest Service/Jicarilla Apache Indian Reservation easterly, to closure at starting point

328974 E 4043226 N

BILLING CODE 4310–55–P





BILLING CODE 4310–55–C

UT–MSNF–1. From Bureau of Land Management map: Blanding 1982. The perimeter of critical habitat unit UT–MSNF–1 is delineated by the following Universal Transverse Mercator (Zone 12) coordinates:

621439 E 4200435 N
622314 E 4199301 N
623701 E 4198888 N
625079 E 4197744 N
627118 E 4197410 N
625844 E 4195697 N
626996 E 4192033 N
626435 E 4189502 N
625861 E 4187782 N
624243 E 4188297 N
623399 E 4187344 N
622298 E 4185223 N
620721 E 4183487 N
621302 E 4180499 N
620910 E 4177949 N
616077 E 4177849 N
616180 E 4171434 N
616844 E 4171415 N
616857 E 4170502 N
610320 E 4170848 N
611014 E 4166074 N
611924 E 4164697 N
612099 E 4162720 N
605809 E 4162619 N
605872 E 4159395 N
605337 E 4159386 N
603392 E 4160665 N
603182 E 4163247 N
602208 E 4164482 N
601057 E 4164878 N
598690 E 4165350 N
596915 E 4164080 N
596178 E 4164008 N
596115 E 4167284 N
594552 E 4167301 N
594508 E 4170508 N

following Manti-La Sal National Forest/ Bureau of Land Management boundary westerly to

593215 E 4171192 N

following Manti-La Sal National Forest/Dark Canyon Wilderness Area boundary to

598399 E 4190933 N

following Manti-La Sal National Forest boundary northerly and easterly, to closure at starting point

621439 E 4200435 N

Primary constituent elements: Mexican spotted owl habitat that includes, but is not limited to, those habitat components providing or with the potential to provide for nesting, roosting, foraging, or dispersal. Forested habitats used for nesting and roosting are characterized as supporting mature stand attributes including high canopy closure, multi-layered canopies, coniferous vegetation (sometimes including a hardwood understory), large diameter trees, high densities of live trees, snags and large logs. Canyon habitats are steep-walled structures with rocky outcrops and crevices; vegetation is generally sparse, but may be relatvely important in the canyon bottoms. Nesting and roosting habitat also supports owl foraging activity; however, a wider array of habitat attributes may be found in areas used solely for foraging, including fairly open and non-contiguous forest, small openings, woodland, and rocky slopes.

Dated: November 29, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–30000 Filed 12–2–94; 12:58 pm]

BILLING CODE 4310–55–P

federal register

Wednesday
December 7, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability (NOFA) and Program Guidelines for the Economic Development Initiative (EDI); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3838; FR–3824–N–01]

Funding Availability (NOFA) and Program Guidelines for the Economic Development Initiative (EDI)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

SUMMARY: This NOFA announces the availability of funds for grants under Section 108(q) of the Housing and Community Development Act of 1974, as amended. HUD reserves the right to award grants under this NOFA up to the maximum amount authorized by law. As of the date of this NOFA and subject to funding availability, HUD intends to award up to $300 million in EDI funds. HUD may award in excess of $300 million if more funds become available.

The Secretary invites applications from specific communities which qualify under Section II.(C) of this NOFA. In addition, EDI grants must be used in connection with activities eligible for assistance and assisted under the HUD Section 108 loan guarantee program (42 U.S.C. 5308)—to enhance the security of the Section 108 guaranteed loan or to improve the feasibility of proposed Section 108 projects through techniques such as interest rate subsidies, loan loss reserves, etc.

This NOFA sets out program guidelines that will govern the application, application review, and award process for EDI grants under this NOFA.

DATES: Applications from invited applicants are due in HUD Headquarters by close of business on December 16, 1994. HUD will not accept applications that are submitted to HUD via facsimile (FAX) transmission.

ADDRESSES: Completed applications should be submitted to the Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Applicants are encouraged to submit applications to Room 7180. However, any application received by the Office of Community Planning and Development in Headquarters, Washington, DC, by the deadline date will be accepted.

FOR FURTHER INFORMATION CONTACT: Roy Priest, Director, Office of Economic Development, Department of Housing and Urban Development, Room 7136, Washington, DC 20410. Telephone (202) 708–2290 (voice) or (202) 708–2565 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements related to this program have been approved by the Office of Management and Budget (OMB) and assigned the approval number 2506–0153.

I. Purpose and Substantive Description

(A) Authority

(1) Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5320) (the "Act"); 24 CFR part 570.

(2) This NOFA is not subject to Section 102 of the Department of Housing and Urban Development Reform Act (42 U.S.C. 3545) because funds under this NOFA are not being awarded on a competitive basis. The applications will not be reviewed by reviewing panels, nor will applications be rated or ranked. The award of funds will be made by the Secretary.

(B) Definitions

Unless otherwise defined herein, terms defined in 24 CFR part 570 and used in this NOFA shall have the respective meanings given to these terms in that part.

CDBG funds means, in addition to those funds specified at § 570.3(e), grant funds received pursuant to Section 108(q) of the Act.

Economic Development Initiative (EDI) or EDI grants means the provision of economic development grant assistance under Section 108(q) of the Act, as authorized by Section 232 of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233) (the "1994 Act").

Economic development project means an activity or activities (including eligible mixed use projects with housing components) that are eligible under Section 108 of the Act and under 24 CFR 570.703.

Empowerment Zone means an urban area so designated by the Secretary pursuant to 24 CFR part 597 (see January 18, 1994 interim rule, 59 FR 2700).

Qualifying Empowerment Zone area means an urban area nominated by one or more local governments and the State or States in which it is located for consideration of designation as an Empowerment Zone pursuant to 24 CFR part 597, and which meets the eligibility requirements for a nominated area pursuant to 24 CFR part 597, subpart B.

Strategic Plan means a strategy developed and agreed to by the nominating local government(s) and State(s) and submitted in partial fulfillment of the application requirements for designation as an Empowerment Zone pursuant to 24 CFR Part 597.

(C) Background

This NOFA provides EDI grant funds to support those communities that submitted applications on behalf of areas that qualify for designation as an urban Empowerment Zone and that have remaining authority to utilize Section 108 funds of at least $40 million, or in the case of an urban Empowerment Zone application from joint entities, that have aggregate Section 108 loan authority for all of the entities that submitted the Empowerment Zone application of at least $40 million. In the case of a joint Empowerment Zone application from two or more entities, HUD will accept a joint EDI application from public entities eligible to apply for loan guarantee assistance pursuant to § 570.702. However, each of the joint applicants will be expected to execute separate EDI grant agreements and separate loan commitments and issuance documents for their related Section 108 loan guarantees. EDI grant awards will not be made to designated urban Empowerment Zone entities designated under that competition.

EDI is intended to complement and enhance the Section 108 Loan Guarantee program (see 24 CFR 570.700–710 for regulations governing the Section 108 program). This provision of the Community Development Block Grant (CDBG) program provides communities with a source of financing for economic development, housing rehabilitation, and large scale physical development projects. HUD is authorized pursuant to Section 108 to guarantee notes issued by CDBG entitlement communities and nonentitlement units of general local government eligible to receive funds under their State CDBG program.

The regulations governing the Section 108 program are found at 24 CFR part 570, subpart M. EDI grants shall also be subject to the rules found at 24 CFR part 570, subpart M.

Additionally, assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, and the implementing regulations in 24 CFR part 135, as amended by an interim rule published on June 30, 1994 (59 FR 33866). Section 3 requires that to the greatest extent feasible, and consistent

with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance be directed to low- and very-low income persons. The eligible activities for which funding is provided under this NOFA are consistent with the objectives of section 3. Public entities awarded funds under this NOFA and that intend to use the funds for housing rehabilitation, housing construction, or other public construction must comply with the applicable requirements of the interim regulations published on June 30, 1994.

The Section 108 program is authorized at $2.054 billion in loan guarantee authority in Fiscal Year 1995. Under the Section 108 program, units of general local government and States, if applicable, pledge future years' CDBG allocations as security for loans guaranteed by HUD. The full faith and credit of the United States is pledged to the payment of all guarantees made under Section 108. In the event that a Section 108 funded activity fails to generate sufficient funds to repay the Section 108 loan and there are insufficient EDI grant funds or other assets available to be used to make the payment, a community would be required to use its CDBG funds to make the loan payment. Without the availability of an EDI grant, this potential disruption in availability of CDBG funds for program activities has made many communities reluctant to utilize the Section 108 loan program. EDI minimizes the potential loss of future CDBG allocations by either providing a loan loss reserve (for use in making Section 108 guaranteed loan payments if needed), lowering the cost of borrowing under Section 108 (making full or partial interest payments), or providing other credit and economic enhancements that reduce the risk that the pledged annual CDBG allocation would be required to fund repayment shortfalls.

Because economic development projects carried out in, or serving, the most economically and physically distressed neighborhoods, such as those found in areas qualifying for urban Empowerment Zone designation, face the greatest risk of loss of Section 108 loan funds, HUD intends to provide a maximum ratio of EDI grant funds to Section 108 loan funds of one-to-one. An EDI grant can reduce the risk to future CDBG funds:

(1) By directly enhancing the security of the guaranteed loan;

(2) By strengthening the economic feasibility of the projects financed with Section 108 funds (and thereby increasing the probability that the project will generate enough cash to repay the guaranteed loan);

(3) By enabling a speedy repayment of the Section 108 loan guarantee notes; or

(4) Through a combination of these risk mitigation techniques.

HUD envisions that the following project structures could be typical:

Funding reserves—The cash flow generated by an economic development project may be expected to be relatively "thin" in the early stages of the project. The EDI grant can make it possible for debt service or operating reserves to be established in a way that does not jeopardize the economic feasibility of the project.

An example is a supermarket or neighborhood shopping center that is designed to provide basic services and jobs for residents in the distressed neighborhood. The public entity must be prepared for the Section 108 loan repayments required during the time period after completion of construction and during the lease-up phase when the shopping center is not fully leased and generating sufficient revenues to support the Section 108 loan repayments. It may therefore require the developer to establish with a trustee a reserve account (or accounts) that would be available to cover operating expenses and/or debt service during this lease-up period. While such reserves are commonplace, their cost may be so high as to make an already risky neighborhood shopping center project economically infeasible. The increased cost resulting from establishing such reserves may be defrayed by the EDI grant. As with the letter of credit example below, such reserves protect the CDBG program against the risk that CDBG funds will have to be used to cover shortfalls in the intended source for repayment of the Section 108 loan.

Over-collateralizing the Section 108 loan—The use of EDI grant funds may be structured in appropriate cases so as to improve the chances that cash flow will be sufficient to cover debt service on the Section 108 loan and directly enhance the guaranteed loan. One technique for accomplishing this approach is over-collateralization of the Section 108 loan.

An example is the creation of a loan pool made up of equal amounts of Section 108 and EDI grant funds. The community would make loans to various businesses at an interest rate equal to or greater than the rate on the Section 108 loan. The total loan portfolio would be pledged to the repayment of the Section 108 loan. If the total loan repayments from the loan fund were twice the amount of the debt service on the Section 108 loan, the community could accumulate a loan loss reserve that would mitigate virtually any risk to future CDBG funds.

Direct enhancement of the security of the Section 108 loan—The EDI grant can be used to cover the cost of providing enhanced security. An example of how the EDI grant can be used for this purpose is by using the grant funds to cover the cost of a standby letter of credit, issued in favor of HUD. This letter of credit will be available to fund amounts due on the Section 108 loan if other sources fail to materialize and will, thus, serve to protect the public entity's future CDBG funds.

Provision of financing to for-profit businesses at a below market interest rate—While the rates on loans guaranteed under Section 108 are only slightly above the rates on comparable U.S. Treasury obligations, they may nonetheless be higher than can be afforded by businesses in severely, economically distressed neighborhoods. The EDI grant can be used to make Section 108 financing affordable.

For example, a community's strategic plan to stabilize the economic viability of a severely distressed neighborhood may provide financial loan assistance to both new and existing businesses at very low interest rates for some period of time until each business has reached a stabilized and profitable level of operation. EDI grant funds would serve to "buy down" the interest rate up front, or make full or partial interest payments, allowing the businesses to be financially viable in the early start-up period not otherwise possible with Section 108 alone.

A combination of these techniques—An applicant could employ a combination of these techniques in order to implement a strategy that carries out an economic development project.

(D) Timing of Grant Awards

EDI applications will be evaluated concurrently with request(s) or application(s) for Section 108 guarantee commitments or request(s) or application(s) for approval of amendments to previously approved Section 108 applications that will be enhanced by the EDI assistance. (See II.B. of this NOFA.) HUD notification to the grantee of the amount and conditions (if any) of EDI funds awarded based upon review of the EDI application shall constitute an obligation of grant funds, subject to compliance with the conditions of award and execution of a grant agreement.

(E) Limitations on Grant Amounts

HUD expects to approve EDI grant amounts of up to $100 million each with the ratio of EDI to Section 108 funds of 1:1. Applicants cannot request grants exceeding a one-to-one ratio of EDI funds to Section 108 funds. In the case of requested amendments to an approved Section 108 loan guarantee commitment, the EDI assistance approved will be based on the increased amount of Section 108 loan guarantee assistance. HUD reserves the right to determine a minimum and a maximum amount of any EDI award per application or project and to modify requests accordingly. The applicant will be required to modify its project plans and application to conform to the terms of HUD approval (final obligation) before execution of a grant agreement. HUD reserves the right to reduce or de-obligate the EDI award if approvable Section 108 loan guarantee applications are not submitted by the grantee in the required amounts on a timely basis.

(F) Eligible Applicants for EDI Grant Assistance

Generally, eligible applicants for EDI grants under section 108(q) of the Act are those public entities eligible to apply for loan guarantee assistance pursuant to § 570.702. However, this NOFA further limits eligible applicants to those communities that submitted applications on behalf of areas that qualify for designation as an urban Empowerment Zone, and that have remaining Section 108 loan guarantee authority of at least $40 million; or in the case of an urban Empowerment Zone application from joint entities, an aggregate Section 108 loan authority for all of the entities that submitted the Empowerment Zone application of at least $40 million. In the case of a joint Empowerment Zone application for two or more entities, HUD will accept a joint EDI application from the same public entities eligible to apply for loan guarantee assistance pursuant to § 570.702. However, each of the joint applications will be expected to execute separate EDI grant agreements and separate loan commitments and issuance documents for their related section 108 loan guarantees.

(G) Eligible Activities

EDI grant funds may be used for:

(1) Activities listed at § 570.703, provided such activities are carried out in the qualifying Empowerment Zone area.

(2) Payment of costs of private financial guaranty insurance policies, letters of credit, or other credit enhancements for the notes or other obligations guaranteed by HUD pursuant to Section 108, provided such notes or obligations are used to finance an economic development project. Such enhancements shall be specified in the contract required by § 570.705(b)(1), and shall be satisfactory in form and substance to HUD for security purposes.

(3) The payment of principal or interest due (including such servicing, underwriting, or other costs as may be authorized by HUD) on the notes or other obligations guaranteed pursuant to the Section 108 loan guarantee program.

II. The Application Process

Public entities applying for EDI assistance under this NOFA must make a specific request for that assistance, in accordance with this NOFA. The EDI application shall be accompanied by a request or requests for Section 108 loan guarantee commitment(s), as further described in Section II.B. of this NOFA below. Application guidelines for the Section 108 program are found at § 570.704.

(A) Timing of Submission

Applications for EDI assistance shall be received at HUD Headquarters at the address listed above at **ADDRESSES** by close of business on December 16, 1994. Applicants are encouraged to submit applications to Room 7180. However, any application received by the Office of Community Planning and Development in Headquarters, Washington, DC, by the deadline date will be accepted. HUD will not accept applications which are submitted to HUD via facsimile (FAX) transmission.

(B) Submission Requirements

(1) The EDI application (an original and two copies) shall be accompanied by a request for loan guarantee assistance under Section 108. The request for Section 108 loan guarantee can be either one or more of the following:

(a) A formal application for Section 108 loan guarantee(s), including the documents listed at § 570.704(b);

(b) A brief description of a Section 108 loan guarantee application(s) to be submitted within 60 days (with HUD reserving the right to extend such period for good cause, generally, on a case-by-case basis) of a notice of EDI selection (EDI awards will be conditioned on approval of actual Section 108 loan commitments). This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance;

(c) If applicable, a copy of a Section 108 loan guarantee approval document with grant number and date of approval (which was approved *after* the date of this NOFA, except in conjunction with a previous EDI award); or

(d) A request for a Section 108 loan guarantee amendment (analogous to subparagraph (a) or (b) above) that proposes to increase the amount of a previously approved application. However, any amount of Section 108 loan guarantee authority approved *before* the date of this NOFA is not eligible to be used in conjunction with an EDI grant under this NOFA. Further, a Section 108 loan guarantee application that is the subject of a prior EDI grant award, whether or not the Section 108 loan guarantee has been approved as of the date of this NOFA, is not eligible for an EDI award under this NOFA. For example, if a community has a previously approved Section 108 loan guarantee of $12 million, even if none of the funds have been utilized, or if the community had previously been awarded an EDI grant of $1 million and had certified that it will submit a Section 108 loan application for $10 million in support of that EDI grant, the community's application under this NOFA must propose to increase the amount of its total Section 108 loan guarantee commitments beyond those amounts (the $12 million or $10 million in this example) it has previously committed.

(2) In addition, for EDI grant assistance, the public entity/entities shall submit the following:

(a) SF 424, Application for Federal Assistance.

(b) The certification regarding lobbying required under 24 CFR part 87 (Appendix A).

(c) A brief narrative statement describing the activities that will be carried out with the EDI grant funds and explaining how the use of EDI grant funds meets the selection criteria in paragraph II.(C) below.

(3) The application shall be deemed to include a copy of the strategic plan for community revitalization previously submitted to HUD as part of a Federal Empowerment Zone application pursuant to a Notice inviting applications, published on January 18, 1994 at 59 FR 2711.

(C) Award Criteria

All applications will be considered for awards under this NOFA based upon the following criteria that demonstrate the quality of the proposed project, and the applicant's capacity and commitment to use EDI funds, in accordance with the purposes of EDI. HUD reserves the right to determine a minimum and maximum amount of any

EDI award per application or project and to modify requests accordingly.

(1) *Threshold*—Only applications that address these threshold factors will be considered:

(a) *Quality of the Section 108/EDI plan.* HUD must determine that the applicant's proposed plan for the EDI grant/Section 108 loan guarantee project(s) or activities will address economic needs in the applicant's qualifying Empowerment Zone area, and the plan for such project(s) or activities is logically, feasibly, and substantially likely to achieve its stated purpose.

(b) *The capacity or potential of the public entity to successfully carry out the Section 108/EDI plan.* HUD must determine that the public entity's performance in the administration of its CDBG program; its previous experience, if any, in administering a section 108 loan guarantee; its performance and capacity in carrying out economic development projects; its ability to conduct prudent underwriting; and its capacity to manage and service loans made with the guaranteed loan funds or EDI grant funds demonstrate that it is substantially likely to carry out the approved projects or activities in a satisfactory manner.

(c) *Distress.* HUD must determine that the level of distress in the immediate community to be served and/or the jurisdiction applying for assistance meets the test of general distress set forth in 24 CFR 597.102 (see January 18, 1994 interim rule, at 59 FR 2704–2705).

(d) *Extent of need for assistance.* HUD must determine that there is a lack of financial resources to carry out the project without EDI assistance. In making this determination, HUD will consider:

(i) Projects costs and financial requirements;

(ii) The amount of any debt service or operating reserve accounts to be established in connection with the economic development project;

(iii) The reasonableness of the costs of any credit enhancement paid with EDI grant funds;

(iv) The amount of program income (if any) to be received each year during the repayment period for the guaranteed loan;

(v) Interest rates on those loans to third parties (other than subrecipients) (either as an absolute rate or as a plus/minus spread to the Section 108 rate);

(vi) Underwriting guidelines used (or expected to be used) in determining project feasibility; and

(vii) Other relevant information.

(2) *Other award factors.*—The Secretary has determined that the following additional factors are appropriate to this NOFA:

(a) The applicant submitted an application for urban Empowerment Zone designation pursuant to the Notice inviting Empowerment Zone applications published January 18, 1994 at 59 FR 2711 (see also paragraph (d) below).

(b) The applicant has remaining Section 108 loan guarantee authority of at least $40 million or in the case of an urban Empowerment Zone application from joint entities an aggregate Section 108 loan authority for all of the entities that submitted the Empowerment Zone application of at least $40 million;

(c) Timing of grant awards—HUD will, consistent with the approvability of the Section 108 guarantee applications submitted, strive to obligate EDI grants contemporaneously with HUD approval of the related Section 108 loan guarantee commitment. However, the EDI grant may be awarded prior to HUD approval of the Section 108 commitment, if approvable Section 108 guarantee applications have not been submitted by the applicant at the time of EDI awards. In addition, EDI funds shall not be disbursed to the public entity before the issuance of the related Section 108 guaranteed obligations;

(d) Activities proposed and approved to be carried out with EDI funds under this NOFA must be located in or serve an area qualifying for designation as an urban Empowerment Zone under the notice inviting applications, published on January 18, 1994 at 59 FR 2711.

(e) Applicants subsequently designated as Federal Empowerment Zones are not eligible to receive funds under this NOFA.

III. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA offers financial assistance to units of general local government, none of its provisions will have an effect on the relationship between the Federal Government and the States, or the States' political subdivisions.

Family

The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. No significant change in existing HUD policies and programs will result from issuance of this NOFA, as those policies and programs relate to family concerns.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the

payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD Office.

Dated: December 2, 1994.

Mark D. Fabiani

Deputy Assistant Secretary for Operations.

[FR Doc. 94–30115 Filed 12–02–94; 8:45 am]

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Part V

Federal Communications Commission

47 CFR Part 24

Implementation of Section 309(j) of the Communications Act—Competitive Bidding; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[PP Docket No. 93–253, FCC 94–285]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this *Fifth Memorandum Opinion and Order* the Commission resolves petitions for reconsideration or clarification of its competitive bidding rules for the entrepreneurs' blocks, including provisions established to ensure that small businesses, rural telephone companies and businesses owned by minorities and women (collectively termed "designated entities") have a meaningful opportunity to participate in the provision of Personal Communications Services in the 2 GHz band (called "broadband PCS"). Among the issues the Commission re-examines in this *Fifth Memorandum Opinion and Order* are matters concerning: the financial caps for entry into the entrepreneurs' block and qualification as a small business; the equity requirements for the control group and other eligibility criteria; joint venture and consortia rules; guidelines for defining *de facto* control of an applicant; permissible management agreements between noncontrolling investors and entrepreneurs' block applicants; treatment of affiliated entities and ownership attribution rules; and installment payments and bidding credits.

The rules and decisions made in this *Fifth Memorandum Opinion and Order* are designed to result in auctions that will serve the public interest by ensuring that small businesses, rural telephone companies and businesses owned by minorities and women have the opportunity to attract the necessary investment capital to compete for and obtain broadband PCS licenses and ultimately to have meaningful involvement in building and managing this nation's broadband PCS infrastructure.

EFFECTIVE DATE: February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Brien Ham at (202) 634–2443 or Peter Tenhula at (202) 418–1720.

SUPPLEMENTARY INFORMATION: The complete text of this *Fifth Memorandum Opinion and Order* in PP Docket No. 93–253, adopted November 10, 1994, and released November 23, 1994, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., Suite 140, Washington, D.C. 20037, telephone (202) 857–3800.

Paperwork Reduction Act

In the *Fifth Memorandum Opinion and Order* in PP Docket No. 93–253, the Commission has amended 47 CFR Part 24 which contains rules and requirements governing the award of broadband PCS licenses through a system of competitive bidding. Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically, and financially qualified to be bid in the entrepreneurs' blocks as entrepreneurs and/or designated entities. Affected members of the public are any members of the public who want to become a broadband PCS licensee in the frequency blocks allocated for entrepreneurs and designated entities. Implementation of the rules contained in the *Fifth Memorandum Opinion and Order* will impose reporting and recordkeeping requirements on certain members of the public. The Federal Communications Commission will submit an information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 3225, New Executive Office Building, Washington, DC 20503, (202) 395–3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 418–0210.

Synopsis of Fifth Memorandum Opinion and Order

Introduction

1. By this action, we resolve petitions for reconsideration or clarification of our rules governing competitive bidding for "entrepreneurs' block" licenses in the 2 GHz band Personal Communications Service ("broadband PCS").[1] Twenty-six petitions were received, as well as 17 oppositions and 8 replies. Specifically, in this *Fifth Memorandum Opinion and Order*, we resolve issues associated with our entrepreneurs' block rules, as well as other provisions we established to ensure that small businesses, rural telephone companies and businesses owned by minorities and women (collectively termed "designated entities") have meaningful opportunities to participate in the provision of broadband PCS. Our goal in this proceeding is to ensure that designated entities have the opportunity to obtain licenses at auction as well as the opportunity to have meaningful involvement in the management and building of our nation's broadband PCS infrastructure. Thus, as we describe below, we make certain modifications to our rules so that they will better serve these goals.

2. When the new broadband PCS auction rules were adopted in the *Fifth Report and Order*, the Commission declared its intent to meet fully the statutory objective set forth by Congress in Section 309(j) of the Communications Act. *See* 47 U.S.C. 309(j). In particular, we observed that it was the mandate of Congress that the Commission should "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given an opportunity to participate in the provision of spectrum-based services." *See* 47 U.S.C. 309(j)(4)(D). We also noted that Congress has directed us to "promote economic opportunity and competition and ensure that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants." *See* 47 U.S.C. 309(j)(3)(B). With these congressional directives in mind, we established the entrepreneurs' blocks and designated entity provisions contained in the *Fifth Report and Order*, which are now under reconsideration.

3. Although we wish to "fine-tune" some aspects of our rules, we generally conclude that the "entrepreneurs' block" concept and the special provisions for designated entities adopted in the *Fifth Report and Order* are the most efficient and effective means to fulfill our statutory mandate to provide for a diverse and competitive broadband PCS marketplace. In

[1] The Commission designated frequency blocks C (1895–1910/1975–1990 MHz) and F (1890–1895/1970–1975 MHz) as "entrepreneurs' blocks". *See Fifth Report and Order* in PP Docket No. 93–253, FCC 94–178 (released July 15, 1994), *reprinted at* 59 Fed. Reg. 37,566 (July 22, 1994) (*Fifth Report and Order*). We also address herein petitions for reconsideration or clarification filed in response to the Commission's *Order on Reconsideration*, FCC 94–217 (released August 15, 1994), *summarized*, 59 Fed Reg. 43,062 (August 22, 1994).

particular, we have adopted measures to ensure opportunities for meaningful participation by minority and women-owned businesses in the emerging broadband PCS marketplace by providing that such entities are eligible for bidding credits, installment payments, reduced up front payments and the benefits of tax certificates, and by adopting eligibility rules that accommodate noncontrolling equity investment.

4. On reconsideration of the *Fifth Report and Order*, we weigh the recommendations of those who have asked us to modify our rules. While we conclude that for the most part our rules will remain unchanged, we find that some rule modifications are necessary to further empower businesses owned by women and minorities and designated entities generally to participate in broadband PCS. Also, our rules need to be clarified in some instances to provide entities wishing to participate in the entrepreneurs' blocks with greater certainty and a better understanding of what is expected of them. Our rule changes will grant designated entities, particularly minority and women-owned applicants, additional flexibility in how they raise capital and structure their businesses. Minority-owned applicants, for example, should be able to draw more readily upon the financial resources and expertise of other successful minority business enterprises. Our revised rules seek to accommodate the many existing minority and women-owned firms that want to enter the PCS market, but whose existing corporate structures do not meet the criteria for entry prescribed in the *Fifth Report and Order*. Thus, experienced minority and women entrepreneurs, who are likely to succeed in the broadband PCS marketplace, are not inadvertently barred from participating in the entrepreneurs' block under our new rules. In sum, our revised rules permit entrepreneurs' block applicants to structure themselves in a way that better reflects the realities of raising capital in today's markets, and to obtain the necessary management and technical expertise for their PCS businesses.

5. As we indicated above, a primary objective on reconsideration is to ensure that our rules promote diversity and competition in the PCS marketplace of the future. In this regard, we believe a special effort must be made to enable minority and women-owned enterprises to enter, compete and ultimately succeed in the broadband PCS market. These designated entities face the most formidable barriers to entry, foremost of which is lack of access to capital. In our effort to provide opportunities for minorities and women to participate in PCS via the auctions process, we strive for a careful balance. On one hand, our rules must provide applicants with the flexibility they need to raise capital and structure their businesses to compete once they win licenses. On the other hand, our rules must ensure that control of the broadband PCS applicant, both as a practical and legal matter, as well as a meaningful measure of economic benefit, remain with the designated entities our regulations are intended to benefit.

6. After reviewing the record, we amend or clarify our entrepreneurs' block rules in several respects.[2] We emphasize that these changes constitute a refinement of our original entrepreneurs' block rules adopted in the *Fifth Report and Order* that will further advance our objectives of promoting competition and diversity in the broadband PCS marketplace.

Background

7. On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (the Budget Act) added Section 309(j) to the Communications Act of 1934, as amended, 47 U.S.C. 309(j). This section gives the Commission express authority to employ competitive bidding procedures to select among mutually exclusive applicants for certain initial licenses. In the *Second Report and Order*in this proceeding, the Commission exercised its authority by determining that broadband PCS licenses should be awarded through competitive bidding and prescribed a broad menu of competitive bidding rules and procedures to be used for all auctionable services.[3] We re-examined certain aspects of these general rules and procedures in the *Second Memorandum Opinion and Order* (released August 15, 1994).[4]

8. In the *Fifth Report and Order*, we established specific competitive bidding rules for broadband PCS.[5] We also decided in the *Fifth Report and Order* to conduct three separate auctions for broadband PCS licenses: the first for the 99 available broadband PCS licenses in MTA blocks A and B; the second for the 986 broadband PCS licenses in BTA blocks C and F (the "entrepreneurs' blocks"); and, the third for the remaining 986 broadband PCS licenses in BTA blocks D and E.[6] The rules adopted in the *Fifth Report and Order* address auction methodology, application and payment procedures, and other regulatory safeguards. In addition, we established the entrepreneurs' block licenses to insulate smaller applicants from bidding against very large, well-financed entities. We also supplemented our entrepreneurs' block regulations with other special provisions designed to offer meaningful opportunities for designated entity participation in broadband PCS. In particular, we made bidding credits and installment payment options available to those entrepreneurs and designated entities that, according to the record of this proceeding, have demonstrated historic difficulties accessing capital. Additionally, we extended the benefits of our tax certificate policies to broadband PCS minority and women applicants to promote participation by these designated entities in the service. We also adopted attribution rules that accommodate passive equity investment in designated entities, but ensure that control of the applicant resides in the intended beneficiaries of the special provisions. Furthermore, we reduced the upfront payment required of bidders in the entrepreneurs' block. Finally, we established partitioning rules to allow rural telephone companies to expedite the availability of offerings in rural areas.

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[2] We delegate to the appropriate Bureau the authority to revise and create forms as needed to ensure that PCS applicants comply with our rules. *See* 47 CFR 0.201–0.204. *See also* 47 U.S.C. 155(c).

[3] *Second Report and Order* in PP Docket No. 93–253, 9 FCC Rcd 2348, 59 Fed. Reg. 2348 (1994) (*Second Report and Order*).

[4] *Second Memorandum Opinion and Order* in PP Docket No. 93–253, FCC 94–215 (released Aug. 15, 1994) (*Second Memorandum Opinion and Order*).

[5] The *Third Report and Order* in this docket established competitive bidding rules for narrowband PCS. *See Third Report and Order* in PP Docket No. 93–253, 9 FCC Rcd 2941, 59 Fed. Reg. 26741 (1993), *recon. Third Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, FCC 94–219 (released Aug. 17, 1994). Also, in a recent *Order*, we reconsidered on our own motion several aspects of our narrowband PCS competitive bidding rules. *See Order on Reconsideration* in PP Docket No. 93–253, FCC 94–240, 59 FR 43062 (released Sept. 22, 1994) (*Order on Reconsideration*). The *Fourth Report and Order* in this docket established competitive bidding rules for the Interactive Video and Data Service (IVDS). *See Fourth Report and Order*, 9 FCC Rcd 2330, 59 Fed. Reg. 24947 (1994).

[6] *See Fifth Report and Order*, FCC 94–178 at ¶ 37. When we crafted our broadband PCS licensing rules in Gen. Docket 90–314, we divided the licensed broadband PCS spectrum into three 30 MHz blocks (A, B, and C) and three 10 MHz blocks (D, E, and F). We also designated two different service areas: 493 Basic Trading Areas (BTAs) and 51 Major Trading Areas (MTAs). The 493 BTAs and 51 MTAs used in our broadband PCS licensing rules have been adapted from the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, at 38–39. *See Second Report and Order* in Gen. Docket No. 90–314, 8 FCC Rcd 7700 (1993), *recon. Memorandum Opinion and Order*, 9 FCC Rcd 4957 (1994), *Order on Reconsideration*, 9 FCC Rcd 4441 (1994), *on further recon. Third Memorandum Opinion and Order*, FCC 94–265, 59 Fed. Reg. 55372 (released Oct. 19, 1994).

9. After the release of the *Fifth Report and Order*, we adopted on our own motion an *Order on Reconsideration*, which made two changes to our competitive bidding rules for broadband PCS concerning our attribution and affiliation requirements.[7] Specifically, we exempted from entrepreneurs' block affiliation rules, entities owned and controlled by Indian tribes or Alaska Regional or Village Corporations. We also decided to permit nonattributable investors in a corporate applicant to own up to 15 percent of the corporation's voting stock, provided that the applicant's control group retains at least 25 percent of the equity and 50.1 percent of the voting stock. We applied this change to investors in both publicly-traded corporate applicants and applicants that are not publicly traded. Most recently, however, we adopted a *Fourth Memorandum Opinion and Order* in this docket, in which we addressed issues raised in petitions for reconsideration of the *Fifth Report and Order* that involve our broadband PCS competitive bidding rules governing auction methodology, application and payment procedures, and regulatory safeguards to prevent anticompetitive practices among bidders.[8] In the instant *Fifth Memorandum Opinion and Order*, we resolve remaining matters in the petitions for reconsideration concerning our entrepreneurs' block rules, including our provisions for designated entities.

Concept of Entrepreneurs' Blocks

Authority and Amount of Spectrum

10. In the *Fifth Report and Order*, the Commission designated a portion of the broadband PCS spectrum available at auction for qualified entrepreneurs.[9] Eligible entrepreneurs can bid on BTA licenses in the C (30 MHz) and F (10 MHz) blocks. In addition, entrepreneurs who fall within one of the four statutory "designated entity" categories (*i.e.*, small business, rural telephone companies, and businesses owned by members of minority groups and/or women) are eligible for additional benefits to enable them to acquire broadband PCS licenses.

11. The Association of Independent Designated Entities (AIDE) contends that the Commission exceeded its statutory authority in establishing the entrepreneurs' block because they potentially benefit entities that fall outside of the four designated entity groups enumerated by Congress. AIDE maintains that the entrepreneurs' blocks reduce meaningful opportunities for smaller designated entities to participate in PCS by forcing them to bid against "entrepreneurs" that may not qualify as designated entities. AIDE further argues that the Commission impermissibly restricted the availability of financial incentives to designated entities for use only in Blocks C and F. Instead, AIDE requests that the Commission make its financial incentives for designated entities available for every auctionable broadband PCS license. The United States Interactive & Microwave Television Association and the United States Independent Personal Communication Association (USIMTA/USIPCA) (filing jointly) support the entrepreneurs' block concept, but encourage the Commission to provide additional broadband PCS spectrum exclusively for designated entities. Citing Congress' concern about the historical impediments that small, minority and women-owned businesses have encountered, USIMTA/USIPCA maintain that "it would not be unreasonable" to set aside up to one-half of the available PCS spectrum. Finally, GTE Service Corporation (GTE) requests the Commission eliminate the entrepreneurs' blocks and instead allow designated entities to "partner" with major investors and be eligible for more generous bidding credits. Additionally, GTE contends that our entrepreneurs' block scheme unduly restricts the ability of cellular carriers to participate in the provision of PCS. Specifically, GTE contends that this scheme, combined with the PCS-cellular cross-ownership restrictions, will effectively limit eligibility for many cellular operators to 20 MHz of spectrum on the D and E blocks.

12. Contrary to AIDE's contention, it is within our statutory authority to establish the entrepreneurs' blocks, for which parties other than designated entities are eligible to apply for or invest in, and we believe that this scheme will provide meaningful opportunities for designated entities to participate in the provision of broadband PCS. Accordingly, we will retain the entrepreneurs' block structure set forth in the *Fifth Report and Order*. In establishing a competitive bidding process for the provision of spectrum-based services, Congress gave the Commission broad authority to adopt bidding procedures and policies, so long as certain objectives are fulfilled. Specifically, Congress mandated that the Commission "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." *See* 47 U.S.C. 309(j)(3)(B). Thus, the language of the statute allows us to consider other entities in order to ensure that licenses are widely dispersed among a variety of licensees,[10] so long as we also, among other statutory objectives, ensure that designated entities are given the opportunity to participate in the provision of broadband PCS. *See* 47 U.S.C. 309(j)(4)(D).

13. The entrepreneurs' blocks approach adopted in our *Fifth Report and Order* achieves the statute's objectives by creating significant opportunities for designated entities and other entrepreneurs to ensure that licenses are widely disbursed to entities that can rapidly deploy broadband PCS services. We are making additional changes to our rules (including eliminating the personal net worth cap and liberalizing our affiliation rules for individual minority investors) to help designated entities overcome particularly intractable historic difficulties in accessing capital. To satisfy Congress' directive, we established the entrepreneurs' blocks in conjunction with a package of benefits that are narrowly tailored to provide significant opportunities to designated entities and those entrepreneurs that lack access to capital.

14. We disagree with USIMTA/USIPCA who requests that the Commission provide additional spectrum for entrepreneurs' blocks. Our existing allotment, which comprises one-third of the total amount of licensed broadband PCS spectrum, is sufficient to ensure that designated entities and other entrepreneurs have significant opportunities to participate in the PCS marketplace. We therefore deny

[7] *See Order on Reconsideration*, PP Docket No. 93–253, FCC 94–217 (released Aug. 15, 1994).

[8] *See Fourth Memorandum Opinion and Order* in PP Docket No. 93–253, FCC 94–246, 59 Fed. Reg. 53364 (released Oct. 19, 1994). On November 17, 1994, we released an *Order*, which modified certain aspects of our stopping and anti-collusion rules, and preserved the right to change the timing of the entrepreneurs' block auctions. *Memorandum Opinion and Order* in PP Docket No. 93–253, FCC 94–295 (released Nov. 17, 1994).

[9] *Fifth Report and Order*, FCC 94–178 at ¶¶118–129. An applicant's eligibility to participate in the entrepreneurs' blocks is based on its size as measured by specified financial caps.

[10] We believe the term "including" used in Section 309(j)(3)(B) of the Communications Act is a term of enlargement, not limitation, intended to convey that other entities are includable together with, rather than excluded from the categories of designated entities so long as legislative intent is satisfied. *See* 2A Sutherland, Statutory Construction § 47.23 (4th ed. 1984).

petitioners' various requests for modification to our entrepreneurs' block provisions.

15. We also reject AIDE's proposal to make bidding credits and other special provisions available to all designated entities bidding on all of the broadband PCS frequency blocks (not just the C and F blocks). Our existing approach of limiting these special provisions to the entrepreneurs' blocks, coupled with changes we are making today are narrowly tailored to meet Congress' objective of ensuring that designated entities have the opportunity to participate in broadband PCS. The record does not support broadening this relief to include additional frequency blocks, nor is there substantial support for broadening the availability of special provisions generally.

16. Similarly, we do not accept GTE's argument that we should do away with the entrepreneurs' blocks and instead offer bidding credits as well as other special provisions across all broadband PCS frequency blocks. As we already explained in the *Fifth Report and Order*, in our judgment we do not anticipate designated entities to realize meaningful opportunities for participation in broadband PCS unless we supplement bidding credits and other special provisions with a limitation on the size of the entities designated entities will bid against. Without the insulation of the entrepreneurs' block, the record strongly supports the conclusion that measures such as bidding credits will prove ineffective for broadband PCS. We also disagree with GTE's contention that our entrepreneurs' block plan unduly restricts the ability of cellular carriers to provide PCS. We believe that the public interest benefits of establishing an entrepreneurs' block outweigh the need to provide additional opportunities for cellular operators as GTE describes. Moreover, our rules do allow cellular operators such as GTE to take noncontrolling interests in designated entities and gain opportunities in the entrepreneurs' block. We have recently revised the cellular-PCS crossownership rules to facilitate such opportunities.[11]

Gross Revenues and Other Financial Caps

Gross Revenues and Total Assets

17. In the *Fifth Report and Order*, the Commission established eligibility rules for the entrepreneurs' blocks based, in part, on an applicant's gross revenues. To bid in the entrepreneurs' blocks, the applicant, its attributable investors (*i.e.*, members of its control group and investors holding 25 percent or more of the applicant's total equity), and their respective affiliates must cumulatively have gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the applicant files its Form 175 ("short form" application). We pointed out in the *Fifth Report and Order* that the $125 million gross revenues limit corresponds roughly to the Commission's definition of a "Tier 2," or medium-sized local exchange carrier (LEC) and would include virtually all of the independently-owned rural telephone companies. Additionally, to qualify for the special provisions accorded small businesses, the applicant (including attributable investors and affiliates), must cumulatively have less than $40 million in gross revenues averaged over the last three years.

18. MasTec, Inc. (MasTec) argues that the Commission's gross revenues test is misleading when applied across the board to all applicants because the gross revenues of investors operating in different industries will not convey the same information about size or the ability to attract capital. The Telephone Electronics Corporation (TEC) notes that the discontinuity between gross revenues and the ability to attract capital is particularly acute where the entity in question is involved in a volume-intensive business with high operating costs and small profit margins (such as TEC's interexchange resale carriers). Accordingly, TEC argues that the Commission's gross revenue criteria are not rationally related to their stated purpose and should be eliminated.

19. Several petitioners request that the Commission modify its gross revenues test, but disagree whether the limits should be liberalized or made more restrictive. For example, MasTec encourages the Commission to modify its designated entity criteria to include those minority businesses which are too small to compete outside of the entrepreneur blocks, but too large to qualify for the entrepreneurs' blocks. The National Paging and Personal Communications Association (NPPCA) and USIMTA/USIPCA urge the Commission to reduce the gross revenues cap. Specifically, NPPCA requests that the Commission reduce the gross revenues limit to $75 million and the total assets limit to $250 million. NPPCA maintains that these modifications are needed because the present size standards encourage mid-sized companies to refrain from bidding in competitively unrestricted auctions and to compete, instead, against designated entities in the entrepreneurs' block auctions.

20. As an alternative to increasing the revenues cap, Omnipoint Communications, Inc. (Omnipoint) and the National Association of Black Owned Broadcasters, Inc. (NABOB) argue that the "aggregation rule," under which the Commission will aggregate the gross revenues and total assets of the applicant, attributable investors and all affiliates in order to determine whether the applicant complies with the financial caps, should be eliminated. Omnipoint contends that a "multiplier approach," employed in other areas of Commission practice, should be used to determine compliance with the financial caps. Under this approach, the revenues and assets attributed to an applicant would be based on the revenues and assets of each attributable investor, multiplied by the percentage ownership interest in the applicant held by that investor.

21. Cellular Telecommunications Industry Association (CTIA) requests that the Commission prescribe specific dates for measuring the financial thresholds to determine entrepreneurs' block eligibility. Specifically, CTIA requests clarification that gross revenues will be measured from the two years preceding September 23, 1993.[12] CTIA maintains that our current rules, referring only to the "last two calendar years," are ambiguous. *See* 47 CFR 24.709(a)(1).

22. Black Entertainment Television Holdings, Inc. (BET), Roland A. Hernandez (Hernandez), Columbia PCS, Inc. (Columbia PCS), and Omnipoint all request that we clarify our rules governing growth by entrepreneurs' block licensees and their attributable investors during the five-year holding period. Our rule, promulgated in the *Fifth Report and Order*, states that "[a]ny licensee * * * shall maintain its eligibility [for the entrepreneurs' blocks] until at least five years from the date of initial license grant, except that increased gross revenues, increased total assets or personal net worth due to non-attributable equity investments * * *, debt financing, revenue from operations, business development or expanded service shall not be considered." *See* 47 CFR 24.709(a)(3). Petitioners ask us to clarify whether the following types of growth in assets, revenues, or personal net worth would result in a licensee's forfeiture of eligibility: (1) Growth of applicant beyond the size limits by

[11] *See Third Memorandum Opinion and Order* in Gen. Docket 90–314, FCC 94–265 (released Oct. 19, 1994), at ¶¶ 33–34.

[12] September 23, 1993 is the date the Commission adopted its broadband PCS service rules order. *See Second Report and Order* in Gen. Docket No. 90–314, 8 FCC Rcd 7700 (1993).

means of mergers or takeovers; (2) any control group member's growth beyond the size limits by means of appreciation of attributable investments or growth of attributable businesses; and (3) affiliates' or attributable investors' growth beyond the size limits, by means of mergers or takeovers.

23. We will retain a single gross revenues size standard, which is an established method for determining size eligibility for various kinds of federal programs that aid smaller businesses.[13] We anticipate that applicants will, in many instances, have several investors and that these investors will be drawn from various segments of the economy rather than from a single industry group such as telecommunications. The financial characteristics of these industry groups will vary widely,[14] and keying the size standard to each investor entity in question is thus administratively unworkable. A gross revenues test is a clear measure for determining the size of a business, and will produce the most equitable result for entrepreneurs' block applicants as a whole.

24. We will also retain the existing gross revenues and total assets limits for the entrepreneurs' blocks and for small business size status. We find the arguments of those who oppose any reduction in the gross revenues limit most persuasive. BET, for example, supports the balance it perceives the Commission has struck between small and mid-sized firms by adopting a $125 million gross revenues test. We agree with BET that a decrease in the gross revenue limit would eliminate many mid-sized firms from entrepreneurs' block participation while not substantially raising the level of competition in the blocks. Conversely, an increase in the gross revenue limit would not necessarily provide for greater capital access for applicants. We believe our $125 million gross revenues test represents an appropriate benchmark for entry into the entrepreneurs' block, given our interest in including firms that, while not large in comparison to other telecommunications companies, are likely to have the financial resources to compete against larger competitors on the MTA blocks.

25. In addition, we will retain the aggregation methodology to assess the size of an applicant, with certain exceptions. We reject NABOB's proposal to eliminate our aggregation rule and we cannot adopt Omnipoint's proposal to determine entrepreneurs' block eligibility and small business size status by separately evaluating the assets and revenues of each attributable investor. Aggregating the gross revenues and total assets of all attributable investors in and affiliates of the applicant is central to an accurate size determination, and consistent with the Small Business Administration's (SBA's) approach to similar determinations. Viewing gross revenues and assets of each investor in isolation could result in very large entities bidding for these licenses. We reject Omnipoint's suggestion that a multiplier approach be used to make these size determinations. A multiplier is appropriate to arrive at an accurate determination of ownership interest in an applicant or licensee. In this context, however, we are not concerned with ownership, but instead seek to make a financially-based size determination in order to assess whether an applicant is eligible for significant governmental benefits.

26. We agree with CTIA that clarification is required concerning the two-year period in order to provide applicants with a uniform way to measure gross revenues for purposes of qualifying for the entrepreneurs' blocks. For the initial entrepreneurs' block auctions involving broadband PCS, companies should use audited financial statements for each of the two calendar years ending December 31, 1993 or, if audited financial statements are not prepared on a calendar-year basis, data from audited financial statements for their two most recently completed fiscal years. Therefore, if applicants and their investors do not have audited statements ending on December 31, 1993, they will have to use one annual statement ending at a later date (sometime in 1994). This approach will enable the Commission to obtain timely financial data while providing applicants with some degree of flexibility in their financial reporting practices. For subsequent entrepreneurs' block auctions (*i.e.*, license reauctioning), we will require applicants to use their last two annual audited financial statements to determine compliance with the financial caps. Newly-formed companies should use the audited financial statements of their predecessors in interests, or financial statements current as of the time their Form 175 (short-form) application is filed that are certified by the applicant as accurate.

27. Clarification is also needed with respect to the issue of growth and takeovers of an entrepreneurs' block licensee or its investors. We clarify our rules to the extent necessary to indicate what types of growth will jeopardize an applicant's continued eligibility as an entrepreneurs' block licensee during the holding period. A licensee could not maintain its eligibility if a member of its control group were itself taken over, effecting a transfer of control of the licensee during the license holding period. However, an attributable investor would not affect the licensee's continuing eligibility for the entrepreneurs' block if another of the investor's affiliates grew or its investments appreciated during the holding period. Our rules consider such growth either to be revenue from the investor's operations or to be normal business development and, in either case, fully permissible. If an attributable investor is taken over or purchased by another entity, the other entity steps into the shoes of the original investor and its assets and revenues will be considered under the continued eligibility rule. However, if an affiliate of the applicant is taken over by (or sold to) another entity, the other entity's assets and revenues would not be considered, so long as no new affiliation arrangement between the applicant and the other entity is created by the takeover or sale. That is, in most cases, the affiliation with the applicant would be severed by such a takeover and the gain from the sale of the affiliates' assets would have already been taken into account by the initial consideration of such assets at the time of application.[15] We emphasize that we have a strong interest in seeing entrepreneurs grow and succeed in the PCS marketplace. Thus, normal projected growth of gross revenues and assets, or growth such as would occur as a result of a control

[13] All federal agencies base eligibility of small businesses (or minority small businesses) to bid on a government contract set aside on the (single) size standard set forth in the solicitation. *See, e.g.*, 13 CFR 121.902. Eligibility for financial assistance from Small Business Investment Companies sponsored by the Small Business Administration is determined by a single size standard applicable across the board to all applicants or by the size standard applicable to the applicant's primary business activity. *See* 13 CFR 121.802. Size status for receiving surety guarantees or assistance under SBA's Small Business Innovation Research Program is also determined by a single, applicant-wide size standard. *See* 13 CFR 121.802(a)(3) and 121.1202, respectively.

[14] The *Standard Industrial Classification Manual*, upon which the Small Business Administration bases its industry size standards, identifies over 800 industry groups to which specific Standard Industrial Classification Codes are assigned. *Standard Industrial Classification Code Manual*, Office of Management and Budget, Executive Office of the President, 1987 ed.

[15] Thus, for example, if Applicant A is affiliated with Corporation B and that corporation sells its business to Corporation C, the income derived from the sale would not affect Applicant A's continued eligibility, unless a new affiliation arrangement arises between Applicant A and Corporation C.

group member's attributable investments appreciating, or as a result of a licensee acquiring additional licenses would not generally jeopardize continued eligibility as an entrepreneurs' block licensee.

Personal Net Worth

28. In addition to the gross revenues and assets caps, the *Fifth Report and Order* also established a personal net worth limit to determine eligibility for bidding in the entrepreneurs' blocks. The current rules require that persons that are applicants, attributable investors in the applicant and all of their respective affiliates who are themselves individuals each have less than $100 million in personal net worth. Additionally, the rules require that if the applicant seeks to qualify as a small business each individual in the control group, attributable investors and all affiliates who are individuals, must have less than $40 million in personnel net worth. *See* 47 CFR 24.720.

29. BET requests the Commission relax the personal net worth limits applicable to attributable investors in minority-owned firms. BET argues that eliminating the personal net worth standard would help ensure participation by minority and women-owned businesses by allowing successful individuals to bring their experience to bear in the PCS marketplace. At the same time, BET argues that this measure would ensure that relatively small, minority and women-owned enterprises have a meaningful opportunity to participate in the provision of PCS. TEC also requests the Commission liberalize its personal net worth standard to permit an attributable individual investor to hold up to $125 million in personal net worth. MasTec claims that net worth/net revenue definitions are overly restrictive and will exclude those minority businesses that can best survive and succeed in the competitive PCS market.

30. We will eliminate the personal net worth limits (both for the entrepreneurs' blocks and for small business size status) for all applicants, attributable investors, and affiliates. The obstacles faced by minorities and minority-controlled businesses in raising capital are well-documented in this proceeding and are not necessarily confined to minorities with limited personal net worth. Therefore, we agree with the view that the personal net worth requirements should be eliminated in the case of minority-controlled applicants seeking to qualify for entrepreneurs' block licenses. However, rather than eliminate the personal net worth limits for minorities only, we will eliminate the requirement for all applicants because personal net worth limits are difficult to apply and enforce and may be easily manipulated. We do not believe that eliminating the personal net worth limits will facilitate significant encroachment by "deep pockets" that can be accessed by wealthy individuals through affiliated entities because, in those instances where access to such resources would create an unfair advantage, the affiliation rules will continue to apply and require that such an entity's assets and revenues be included in determining an applicant's size. Thus, we emphasize that we believe the affiliation rules make the personal net worth rules largely unnecessary since most wealthy individuals are likely to have their wealth closely tied to ownership of another business.

Treatment of Affiliates

31. The *Fifth Report and Order* sets forth specific affiliation rules for identifying all individuals and entities whose gross revenues and assets must be aggregated with those of the applicant in determining whether the applicant exceeds the financial caps for the entrepreneurs' blocks (or for small business size status). The affiliation rules were adapted from those used by the SBA for purposes of assessing size status and consequent eligibility to participate in SBA's loan, procurement and minority enterprise programs.

32. Specifically, our rules identify which individuals or entities will be found to control or be controlled by the applicant or an attributable investor by specifying which ownership interests or other criteria will give rise to a finding of control and consequent affiliation. In the August 15, 1994 *Order on Reconsideration* we exempted Indian tribes and Alaska Regional and Village Corporations (hereafter "Indian tribes") from the affiliation rules for purposes of determining eligibility to participate in bidding on the entrepreneurs' blocks.[16]

33. BET and others argue that we did not provide adequate notice or opportunity to comment on the possibility of the Commission adopting affiliation rules for all entrepreneurs' block participants (specifically, minorities and women). BET argues that we have thus violated the notice and comment requirements of the Administrative Procedure Act (APA), and that the Commission is required to issue a *Further Notice* prior to adopting the affiliation rules. BET also contends that the affiliation rules add unnecessary complexity to the broadband auction rules and that they make it very difficult, if not impossible, for potential bidders to tailor their pre-existing business relationships and ownership structures to our eligibility requirements.

34. Several parties have filed petitions for reconsideration of our Order on Reconsideration. On reconsideration of the *Fifth Report and Order*, several petitioners also challenge the limited exemption granted to Indian tribes or request that generic exemptions be granted for other applicants. BET and MasTec oppose any special treatment for a particular minority group, arguing that the exemption accorded Indian tribes creates an imbalance of bidding power in favor of tribally-owned entities and will skew the broadband PCS auction results. Cook Inlet Region, Inc. (Cook Inlet) argues that the exemption for Indian tribes should be expanded to encompass eligibility for treatment as a small business for purposes of bidding credits and installment payments because: (1) Indian tribes are congressionally recognized as particularly disadvantaged; (2) such an exemption applies when determining size status for SBA's programs; and, (3) substantial legal constraints with respect to tribal property and businesses preclude their use to raise capital or to cross-subsidize other tribally-owned entities.

35. More specifically, Cook Inlet assets that Indian tribes and Native corporations deserve special treatment because they face legal constraints that differ from other minority-owned businesses. According to Cook Inlet, Federal law prohibits Native corporations from pledging their stock as collateral for loans, issuing new stock to raise funds in traditional capital markets, or utilizing the majority of the revenues from their land holdings to invest in new enterprises. Thus, Cook Inlet contends that Indian tribes and Native corporations should be exempt from both the affiliation rules and the small business test because Native corporations cannot utilize their assets or revenues to fund new business ventures in the same way other corporations can. In reply, BET asserts that Alaska Regional Corporations still enjoy significantly greater access to

[16] *Order on Reconsideration*, FCC 94–217 at ¶¶ 3–7. As we indicated in our *Order on Reconsideration*, we apply the term "Indian tribe" as it is statutorily defined in 25 U.S.C. § 450b(e) to include "any Indian tribe, band nation, or other organized groups or community, including any Alaska Native Village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians." *Id.* at ¶ 4, n. 7.

capital than other minority-owned entities participating in the bidding for the entrepreneurs' block licenses despite any restrictions they might have on their assets.

36. TEC seeks an exemption from the affiliation rules for rural telephone companies, arguing that regulatory and corporate barriers prohibit small telephone companies like TEC from shifting broadband PCS costs to their affiliated resellers and that courts have found questions of affiliation to be irrelevant where such barriers to cross-subsidization exist. MEANS/SDN suggests a more narrowly tailored exception that would exempt centralized equal access providers (*i.e.*, a consortia of rural telephone companies that provide centralized equal access and other sophisticated information services) from the Commission's affiliation rules. MEANS/SDN argues that this modification would allow the consortia to bring their considerable expertise and efficiencies to bear in the deployment of broadband PCS.

37. After considering petitioners' various concerns, we will not eliminate the affiliation rules. As explained fully below, however, we create a limited exception to our affiliation rules that will apply when an attributable minority investor or enterprise in an applicant or an applicant's control group has controlling interests in other concerns. We also revise our treatment of Indian tribes under our affiliation rules to more narrowly tailor our application of these rules to the unique status of these minority groups.

38. As an initial matter we do not believe the promulgation of the affiliation rules violated the notice and comment requirements of the Administrative Procedures Act. Our *Notice of Proposed Rule Making* in this docket[17] alerted petitioners to the fact that the Commission was considering SBA's size standards which, by their terms (as set forth in the *Notice*), incorporate the concept of affiliation in determining a firm's small business size status.[18] The question of affiliation is integral to the concept of size status, by whatever means size status is assessed. Without affiliation rules, large firms may unfairly avail themselves of the preferences intended for small businesses and other designated entities since they have an incentive to create subsidiaries (that would have access to the parent's substantial resources) to compete against *bona fide* applicants in the entrepreneurs' blocks. Adoption of affiliation rules similar to those used by the SBA is a logical outgrowth of the Commission's decision to impose a gross revenues test for small businesses and to consider SBA's size standards in establishing that test.[19] It was reasonable for petitioners to conclude that such rules would be applied in assessing eligibility for the entrepreneurs' blocks and for small business size status. Thus, sufficient opportunity to comment was provided on the affiliation rules since they play an integral role in any determination of size status. Moreover, we see no advantage in seeking additional comment on the affiliation rules since petitioners, such as BET, had a full and fair opportunity to suggest modifications to our affiliation rules, some of which we adopt on reconsideration. A *Further Notice* could also substantially delay the auction of entrepreneurs' block licenses.

39. Furthermore, we decline to adopt the suggestion that we eliminate the affiliation rules on the grounds that these rules are unduly complex or overburdensome. Affiliation rules are an established and essential element in determining an applicant's compliance with a gross revenues (or other) size standard. Their use ensures that all financial and other resources available to a company will be considered in assessing its size status. The Commission's affiliation rules, in conjunction with its attribution rules, are intended to include in this calculation: (1) All individuals and entities that directly or indirectly control the applicant, any member of its control group, or any other investor having an attributable interest in the applicant; (2) any other entities also controlled by such individual or entity; (3) all entities over which the applicant has direct control or indirect control through an intermediary; and (4) all other entities over which a member of its control group or any other attributable investor has direct or indirect control. Elimination of the affiliation rules would result in an underassessment of an applicant's size and would present an unrealistic picture of the applicant's need for bidding credits, installment payments and reduced up front payments.

40. We are persuaded, however, that a limited exception to our affiliation rules is appropriate for minority-owned applicants and applicants owned by a combination of minorities and women. The exception will apply to affiliates controlled by investors who are members of minority groups who are attributable members of an applicant's control group. Under the exception, the gross revenues and assets of affiliates that the minority investor controls will not be counted in determining the applicant's compliance with the financial caps, both for purposes of the entry into the entrepreneurs' block and for purposes of the applicant qualifying as a small business.

41. This exception will permit minority investors that control other concerns to be members of an applicant's control group and to bring their management skills and financial resources to bear in its operation without the assets and revenues of those other concerns being counted as part of the applicant's total assets and revenues. By making such an exception, we further our goal of addressing traditional problems minorities have of accessing capital. As we documented in the *Fifth Report & Order*, minorities have faced and continue to face unique barriers to capital from traditional, non-minority sources. To raise capital for a new business venture, therefore, minorities need the ability to draw upon the financial strength and business experience of successful minorities and minority-owned businesses within their own communities; they may not have access to any other source of funds on which to draw. Moreover, this exception permits minority applicants to pool their resources with other minority-owned businesses and draw on the expertise of those who have faced similar barriers to raising capital in the past.[20] We therefore conclude that

[17] *See Notice of Proposed Rule Making* in PP Docket No. 93–253, 8 FCC Rcd 7635, 7647 at ¶ 77 and n. 51, 78 (1993) (*Notice*).

[18] *See* 13 CFR 121.802(a)(2). *See also* 13 CFR 121.401(a) (which provides that "* * * size determinations shall include the applicant concern and all its domestic and foreign affiliates).

[19] Rules adopted as a "logical outgrowth" of a *Notice of Proposed Rule Making* satisfy our APA notice requirements. *See Public Service Commission of the District of Columbia* v. *FCC*, 906 F.2d 713, 717 (D.C. Cir. 1990); *Small Refiner Lead Phase-Down Task Force* v. *EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983). An agency must be free to adopt a final rule not described exactly in the *Notice*, where the difference involved is "sufficiently minor," otherwise, agencies could not change a rule in response to valid comments without beginning the rulemaking anew. *See National Cable Television Assoc., Inc.* v. *FCC*, 747 F.2d 1503, 1507 (D.C. Cir. 1984).

[20] *See, e.g.*, Ellis, B., "Black Community Needs to Focus on Capital Formation," *The Philadelphia Tribune*, May 20, 1994, at 6A ("[R]ecent immigrants (in the African-American community) have utilized family and friends as a means of pooling their savings—*i.e.*, to form capital); Lee, E., "Korean American Grocers All Over the Country Hit Hard By Recession and Crime," *AsianWeek*, Dec. 17, 1993, Vol. 15, No. 17 at 1 ("[F]amily members often employed [in Korean-owned businesses] and informal Korean credit organizations give many business owners their starts * * *."); Lesly, E., and Mallory, M., "Inside the Black Business Network," *Business Week*, Nov. 29, 1993, at 70 ("African

further tailoring of our affiliation rules to the specific capital formation problems of minorities is necessary to avoid eliminating a traditional source of capital for minority businesses—the minority community itself. We note that this exception applies only to affiliates controlled by minority investors in the applicant or members of the applicant's control group. The exception does not apply to affiliates of such investors or businesses that control the applicant or that have an attributable interest in the applicant. Thus, a minority-owned firm that exceeds the financial caps would not be able to create a subsidiary to participate in a PCS applicant's control group.[21]

42. As we established in our *Order on Reconsideration*, we treat Indian tribes differently under our affiliation rules for purposes of our entrepreneurs' block financial caps because of their unique legal status. Specifically, we exclude the gross revenues and total assets of Indian tribes in our calculations for purposes of determining whether an affiliated applicant satisfies our entrepreneurs' block financial caps. After considering the arguments of petitioners, we also will exclude generally the revenues of Indian tribes in our calculations for purposes of determining small business eligibility.

43. In response to MasTec's and BET's concerns about special treatment for a particular minority group, we clarify that we exempt Indian tribes generally from our affiliation rules because Congress has imposed unique legal constraints on the way they can utilize their revenues and assets. Cook Inlet contends that, while other minority-owned businesses can issue debt and equity securities and pledge their assets and securities to raise capital, the real and personal property interests held by Alaska Native Corporations are subject to a number of constraints—both legal and cultural—that affect their ability to manage and dispose of property. For example, under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, the stock held by Native corporations is subject to strict alienability restrictions—it cannot be sold, pledged, mortgaged, or otherwise encumbered. Thus, Native corporations are precluded from two of the most important means of raising capital enjoyed by virtually every other corporation: (1) The ability to pledge stock of the company against ordinary borrowings, and (2) the ability to issue new stock or debt securities. In addition, assets held by Indian tribes include land holdings that cannot be used as collateral for purposes of raising capital, because the land holdings are owned in trust by the federal government or are subject to a restraint on alienation in the government's favor. Congress has not placed similar legal constraints on the assets and revenues of enterprises owned by any other minority group. We agree with Cook Inlet that such legal restraints on assets and revenues place Indian tribes at a disadvantage vis-a-vis other minority groups with similar revenues and assets. Finally, as we noted in our *Order on Reconsideration*, Congress has mandated that the SBA determine the size of a business concern owned by a Tribe without regard to the concern's affiliation with the Indian tribe. Our policy mirrors this congressional mandate.

44. After considering the record, however, we have determined that gaming revenues generally are not subject to the same types of legal restrictions as other revenues received by Indian tribes. Therefore, we establish a rebuttable presumption that revenues derived from gaming pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*, will be included in our calculations when determining whether an applicant that is affiliated with an Indian tribe qualifies for the entrepreneurs' block or as a small business. Cook Inlet has set forth several reasons why we should treat gaming revenues differently from other types of Indian tribe revenues. First, Cook Inlet argues that these revenues were not part of the tribal economic picture when Congress enacted the SBA tribal exception to the affiliation rule in 1970. Second, Cook Inlet contends that the Indian Gaming Regulatory Act provides certain Indian tribes with a non-traditional source of revenue that could be very substantial. Cook Inlet also asserts that gaming revenues are not subject to the same types of legal and governmental controls as other revenues received by Indian tribes, and therefore are more analogous to the revenues of non-Indian entities. Furthermore, Congress granted the SBA (whose rules inspired our affiliation rules) flexibility to treat tribal and other affiliations with exceptional revenues differently if such revenues would create an "unfair competitive advantage."[22] Gaming revenues generated by tribal organizations, appear to be exceptional revenues that if not included, create an unfair competitive advantage in the auctioning of broadband PCS entrepreneurs' block licenses. Thus, we will include such gaming revenues in our calculations when determining eligibility for the entrepreneurs' block and for small business status, unless the entrepreneurs' block applicant establishes that it will not receive an unfair competitive advantage, because significant legal constraints restrict its ability (or an affiliate's ability) to access and utilize revenues from gaming.

45. Finally, we decline to create an exception to our affiliation rules for rural telephone companies. We are concerned that relaxing our rules would unfairly match large rural telephone companies, with greater access to capital, against entrepreneurs and designated entities (including small and medium-sized rural telephone companies). We note in this regard, that rural telephone companies already enjoy substantial regulatory benefits (*e.g.*, access to Rural Electrification Administration loans) affecting available capital in comparison to other designated entities. Moreover, we observe that rural telephone companies will be permitted to acquire partitioned licenses at any time after the close of auctions. We believe that existing measures will thereby achieve our goal of facilitating the rapid deployment of PCS to rural areas. At MEANS/SDN's request, however, we clarify that a centralized equal access provider (*i.e.*, a group of rural telephone companies that

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Americans are forming pools of capital and new opportunities that are helping to overcome traditional barriers to success."); Miller, Y., "Improvements Seen in Minority Business Loans," *Bay State Banner*, Nov. 21, 1993, Vol. 29, No. 14, at 1 ("Many entrepreneurs in the minority community have their business cash flow tied up in their personal assets and expenses * * *."); Stone, S., "Why Can't We All Get Along? Many Blacks, Koreans Find Understanding," *The Philadelphia Tribune*, Nov. 23, 1993, Vol. 110, No. 100 at 1a ("Koreans don't usually go to banks * * *. What they have done is form their own [credit] pools. * * * Chinese-Americans also have lending pools; many Jamaicans have the same thing."); Wynter, L., "Understanding Capital is Key to Getting It," *Emerge*, Aug. 31, 1993, Vol. 9, No. 4, at 22 (minority venture capital firm finances several black-owned firms including Essence Communications and Earl G. Graves. Ltd).

[21] For example, if M, an attributable minority investor in the applicant, controls Corporation C with assets of $500 million, but Corporation C does not control applicant A and is not an attributable investor in Applicant A, the assets and revenues of Corporation C will not be counted in assessing A's compliance with the financial caps for either the entrepreneurs' blocks or small business size status. On the other hand, if M Corporation, a minority-owned company with an attributable interest in Applicant A, is controlled by Corporation C in the above example, or is under common control with Corporation C, the assets and revenues of M Corporation's affiliates are attributable.

[22] As we noted in our *Order on Reconsideration*, Section 7(j)(10)(J) of the Small Business Act gives the SBA the discretion to consider tribal and other affiliations if it determines that one or more such tribally-owned businesses has obtained, or is likely to obtain, a substantial unfair competitive advantage within an industry category. *See* 15 U.S.C. 636(j)(10)(J)(ii)(11).

provide centralized equal access and other sophisticated information services)[23] will not be deemed an affiliate of each of its constituent members. Based on the record, it does not appear that such entities control their constituent members or that each of the members control the centralized equal access providers. Thus, for example, if two or more of MEANS' members form a consortium of small businesses that apply for the entrepreneurs' blocks, MEANS itself would not be attributed to each one of the small businesses. We agree with MEANS that this clarification will contribute to the efficient deployment of broadband PCS in rural areas.

Designated Entity Definitions

Minority and Women-Owned Businesses

46. In the *Fifth Report and Order*, we adopted the definition of the term "members of minority groups" as set forth in our *Second Report and Order* in this docket.[24] Thus, we defined "members of minority groups" as "* * * individuals of African-American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction." *See* 47 CFR 24.720(i).

47. Karl Brothers requests that the Commission amend its definition of "members of minority groups" to include businesses owned by individuals with disabilities. Specifically, Karl Brothers suggest the Commission adopt the standard established in the SBA Section 8(a) program to determine who should qualify for designated entity status. According to Karl Brothers, this SBA program includes businesses owned by disabled individuals under a "means" and "socially disadvantaged" test. Karl Brothers maintains that the congressional mandate to give special preference to minority groups is not limited to just ethnic minorities, but should include other historically disadvantaged minorities. Karl Brothers maintains that Congress was merely giving examples of groups to be included in the definition of minorities, not limiting the definition to ethnic groups only. Karl Brothers contends that there is no statutory language excluding other disadvantaged groups.

48. After considering Karl Brothers' request, we will not include persons with disabilities in the definition of minorities for purposes of bidding on the entrepreneurs' blocks and obtaining the special provisions available to minority applicants. The record in this proceeding does not contain any evidence that demonstrates that firms owned by persons with disabilities have more difficulty accessing capital than any other small business. In this respect, the record of this proceeding on the difficulties that minorities, women and small businesses, in general, have experienced accessing capital strongly supports the special provisions we adopted for these groups. Moreover, individuals with disabilities are not expressly named as a designated entity in Section 309(j)(4)(D) of the Communications Act, and there is no indication in the legislative record of the statute that Congress intended to expand this group of beneficiaries to include any group or individual that can demonstrate that it is "socially disadvantaged" similar to the SBA Section 8(a) approach described by the Karl Brothers. Unlike the Small Business Act, Section 309(j)(4)(D) of the Communications Act does not contain the term "socially disadvantaged." *Compare* 47 U.S.C. 309(j)(4)(D) *with* 15 U.S.C. 637(a) (1), (4) and (5). We note that even in the SBA context, that agency presumes eligibility for Section 8(a) status for minority groups (which are defined in racial and ethnic terms), but firms owned by persons with disabilities must demonstrate that they are "socially disadvantaged" in order to gain entry into the program. Also, the SBA's denial of Section 8(a) status for firms owned by persons with disabilities where such "social disadvantage" has not been established, has been upheld in court.[25]

49. Additionally, there is no indication that in enacting Section 309(j)(4)(D) Congress intended to expand the definition of "members of minority groups" to include classes of persons other than racial or ethnic groups, such as those listed in the preceding subsection, Section 309(i).[26] We further observe that in no other Commission context, have we included disabled persons in the categories of groups that comprise our definition of minorities. Making such a change here, without clear statutory and legislative support to do so, would therefore be inconsistent with our traditional application of the definition, which we believe should be uniform in all licensing contexts.[27]

50. We wish to emphasized also, that it is highly likely that most firms owned by individuals with disabilities will be eligible to bid in the entrepreneurs' block and for an installment payment option if they meet the required gross revenues and total assets test. Such firms may also be eligible for "enhanced" installment payments and bidding credits if they qualify as small businesses under our rules. Indeed, absent a substantial record that demonstrates firms owned by persons with disabilities have any more difficulty accessing capital then any other small business, we find that we cannot accommodate the Karl Brothers request.

51. We also note that we have before us a Petition for Rulemaking filed by David J. Lieto (Lieto Petition), which requests that the Commission amend Section 1.2110 of the Commission's rules to provide that disabled individuals are within the minority group categories and are thus entitled to the benefits associated with being a designated entity under the Commission's auction rules. *See* David J. Lieto Petition for Rulemaking, filed September 21, 1994, at 2–3. As stated above, we believe that our existing rules provide opportunities for individuals with disabilities to participate in the entrepreneurs' block, and that there is no direct statutory or record support for Lieto's request. Furthermore, Lieto has failed to provide a record comparable to that for women and minorities demonstrating that disabled individuals experience difficulties accessing capital that are unique to their status. Accordingly, we decline to initiate a rulemaking at this time, and hereby dismiss the Lieto Petition.

52. In response to numerous inquiries,[28] however, we revise the

[23] *See, e.g.*, 47 CFR 69.112(i) (citing to *Transport Rate Structure and Pricing*, CC Docket No. 91–214, FCC 920442, 7 FCC Rcd 7002 (1992), *modified*, 8 FCC Rcd 5370, 5287 (1993) for description of "centralized equal access providers").

[24] *See Fifth Report and Order*, FCC 94–178 at n. 157. *See also Second Report and Order*, 9 FCC Rcd 2348, 2397 n. 209, *quoting Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979, 980 n. 8 (1978) and *citing Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 92 FCC 2d 849, 849 n. 1 (1982); 47 CFR 1.2110(b)(2).

[25] *See Doe* v. *Heatherly*, 671 F. Supp. 1081, (M.D.C. 1978) *aff'd* 854 F.2d 1316 (4th Cir. 1988).

[26] 47 U.S.C. 309(i)(3)(C)(ii). Below, we revise our definition of "members of minority groups" to conform to this statutory definition. In interpreting this definition in the past, we have taken a restrictive view of the categories of minorities included in this definition and limited its expansion. *See Third Report and Order*, Gen. Docket No. 81–768, 102 FCC 2d 1401 (1985).

[27] *See In re Petition of Paralyzed Veterans Of America, et. al, to Amend Regulations Facilitating Minority Ownership of Broadcast Facilities to Include the Physically Handicapped, Memorandum Opinion and Order*, FCC 85–651, 59 Rad. Reg. 2d (P&F) 1353 (released Dec. 16, 1985), *petition for review dismissed as untimely, California Assoc. of the Physically Handicapped, Inc. v. FCC*, 833 F.2d 1333 (9th Cir. 1987).

[28] We received several inquiries about the definition of "members of minority groups" from participants in the FCC PCS seminars, which

definition of "members of minority groups" slightly to conform with the definition of minority used in other contexts.[29] Thus, § 24.720(i) shall read as follows: "Members of minority groups include Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders." [30] We have also been asked to clarify the meaning of particular categories in the definition of minority. Again, for consistency, we shall use the same category descriptions the Commission has relied on in other contexts.[31] These categories are as follows:

a. *Black.* A person having origins in any of the black racial groups of Africa.

b. *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

c. *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliations or community recognition.

d. *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Indian, Japan, Korea, the Philippine Islands, and Samoa.

To address any specific claims or allegations regarding an individual race or origin, we will follow existing Commission precedent.[32] To the extent that prior Commission cases do not provide adequate guidance in specific cases, we may look to cases developed under minority programs in other federal agencies, such as the Office of Management and Budget (OMB) and the SBA.

provide an overview of the PCS rules and procedures. The seminar series included sessions held in the following locations: Washington, D.C. (Aug. 29 1994); Chicago (Aug. 22, 1994); Denver (Aug. 24, 1994); San Francisco (Aug. 26, 1994).

[29] *See, e.g., Broadcast Equal Employment Opportunity Rules and FCC Form 395*, 70 FCC 2d 1466, 1473 (1979); 47 CFR 73.3555(d)(3)(iv), 1.1621(b); *see also* 47 U.S.C. § 309(i)(3)(c)(ii); Race and Ethnic Standards for Federal Statistics and Administration Reporting, OMB Statistical Policy Directive No. 15 (1977).

[30] In a separate *Order*, we shall be making the same correction to the definition of minority groups used in the generic auction rules (*see* 47 CFR 1.2110(b)(2)) and the narrowband auction rules (*see* 47 CFR 24.320(f)).

[31] *See Broadcast Equal Employment Opportunity Rules and FCC Form 395; See also* "Instructions for Completing FCC Forms 395–A & 395–M," Section V (Race/Ethnic Categories).

[32] *See, e.g., Lone Cypress Radio Assoc. Inc.*, 7 FCC Rcd 4403 (Rev. Bd. 1992), and cases cited therein; *See also Storer Broadcasting Co.*, 87 FCC 2d 190, 191–93 (1981).

Small Business Consortia

53. In the *Fifth Report and Order* the Commission allowed a consortium of small businesses to qualify collectively for the preferences available to a small business if each business within the consortium individually satisfies the definition of a small business designated entity. The Commission defined a small business designated entity as any company that, together with attributable investors and affiliates, has average gross revenues for the three preceding years of not in excess of $40 million. We defined "consortium of small businesses" as a conglomerate organization formed as a joint venture among mutually-independent business firms, each of which individually satisfies the definition of a small business. *See* 47 CFR § 24.720(b)(3). In the *Second Report and Order*, we concluded that consortia should not always be entitled to qualify for measures designed specifically for designated entities. In the *Fifth Report and Order*, however, we stated that for the auctioning of broadband PCS, it is especially necessary to allow small businesses to pool their resources in this manner to help them overcome capital formation problems. Thus, our rules provide that if a consortium's members are all small businesses (*i.e.*, defined as companies that do not have average yearly gross revenues for the preceding three years in excess of $40 million), the consortium as a whole will qualify for designated entity provisions for small businesses.

54. Omnipoint requests that the Commission allow small businesses to form a single corporate applicant (rather than a joint venture) and get the same treatment as consortia. BET requests that the Commission eliminate the preference available to small business consortia.

55. We believe the current preferences for small business consortia are adequate and necessary to ensure that small businesses have sufficient opportunities to participate in the broadband PCS auctions. Accordingly, we deny BET's request to eliminate the small business consortia preferences. As we observed in the *Fifth Report and Order*, allowing small businesses to pool their resources in this manner is necessary to help them overcome capital formation problems and ensure their participation in the provision of broadband PCS. We believe that small, rural telephone companies, in particular, are expected to use this mechanism to compete in some of the smaller markets.

56. We also deny Omnipoint's request that small businesses be allowed to form a single corporate applicant that would be afforded the same treatment as consortia. The concept of a consortium is that each small business participant remains a distinct corporate entity independent of other consortium members and that each member has rights and obligations similar, or equal to, those held by participants in other types of joint ventures. Allowing a group of small businesses to apply as one corporate applicant and receive the benefits or our consortia rule would disadvantage small, independent businesses wishing to bid as a group under our rule, but who cannot restructure as a corporate applicant and could tend to dilute each member's influence and insulate their responsibilities in the venture. We believe that such a change would also eviscerate our small business eligibility size requirement. We wish to clarify, however, that we intent to examine the qualifications of each consortium member to ensure that each is a *bona fide* small business. In this regard, it is assumed that each concern should be an entity "organized for profit" and not for the sole purpose of qualifying as part of a small business consortia. This is consistent with SBA's long-standing definition of "business concern." *See* 43 CFR 121.403(a), *Small Business Size Standards*, 54 FR 52634 (Dec. 21, 1989).

57. On another issue, BET contends that the $40 million gross revenues standard fails to comply with an SBA requirement that any size standard proposed by a federal agency that varies from SBA's standard be "proposed after an opportunity for public notice and comment" and be "approved by the Administrator [of the SBA]." [33] We believe we have fully met our notice and comment obligations, both under the Administrative Procedures Act and the Small Business Act, in this proceeding. We solicited comment on a range of size options, and received comment that included SBA's recommendation for a $40 million gross revenues cap (which we ultimately adopted). Indeed, we recently obtained SBA's approval of the $40 million size standard.[34]

[33] *See* 15 U.S.C. 632(a)(2)(A) and (C)

[34] *See* Letter to William Kennard, FCC General Counsel from Philip Lader, SBA Administrator, Nov. 9, 1994 (responding to Aug. 19, 1994 request for size approval).

Eligibility Requirements

Minimum Equity Limit for the Control Group

58. In the *Fifth Report and Order*, the Commission adopted a methodology for assessing an applicant's compliance with the financial caps for the entrepreneurs' blocks and for small business size status based on the distinction between: (a) Noncontrolling investors (whose financial status would not be attributed to the applicant); and (b) investors holding interests in the control group of the applicant. The gross revenues, assets and personal net worth limits of attributable investors (*i.e.*, those with more than 25 percent equity) and all control group members, regardless of the size of their individual interests, are included in assessing an applicant's compliance with the financial caps. To qualify as a women or minority-owned business, the Commission further required that the control group be composed entirely of women and minorities. The control group requirement ensures that designated entity and entrepreneur principals retain control of the applicant and own a substantial financial interest in the venture. At the same time, it enables noncontrolling investors outside the control group to provide essential capital to an applicant without their revenues, assets or net worth being attributed to the applicant or their non-minority or male status disqualifying the applicant.

59. The Commission adopted two control group options in the *Fifth Report and Order*. Under the first option, passive investors are permitted to own up to 75 percent of the applicant's total equity, so long as: (1) No investor holds more than 25 percent of the applicant's passive equity (which was subsequently defined to include up to 15 percent of a corporation's voting stock); and (2) in the case of a corporate applicant, at least 50.1 percent of the voting stock is held by the control group. In the case of partnership applicants, the control group must own all the general partnership interests. The Commission determined that this minimum equity level strikes an appropriate balance between the competing considerations of permitting qualified bidders to raise capital and ensuring that designated entities receive a significant economic benefit from the venture. The Commission extended an alternate option to qualified women or minority-owned businesses. Under this option, the Commission would permit a single investor in a minority or women-owned applicant to own up to 49.9 percent of the passive equity (which we subsequently defined to include up to 15 percent of a corporation's voting stock), so long as the control group holds the remaining 50.1 percent of the equity. As with the first option, the control group is required to retain control and, in the case of a corporate applicant, hold at least 50.1 percent of the voting stock. Also, ownership interests are to be calculated on a fully diluted basis.

60. Petitions filed by BET, Columbia PCS, CTIA, EATEL, Lehman Bros. and Omnipoint variously address the Commission's restrictions on the composition of an applicant's control group. Specifically, petitioners request clarification that our attribution rules and definitions of minority and women-owned business be interpreted to permit "nonqualifying" noncontrolling investors *within* the control group. "Nonqualifying" investors, as petitioners describe, are investors that are neither women nor minorities, or investors that if attributed would cause the applicant to exceed the financial caps. EATEL argues that to do otherwise may preclude participation by existing companies whose existing corporate structures would disqualify an applicant absent significant expenditures for corporate restructuring. EATEL maintains that existing entities have the greatest amount to offer applicants in terms of financial and technical resources. Petitioners also request that the Commission allow a limited amount of equity investment in the control group to help the applicant comply with the 25 percent minimum equity requirement. Columbia PCS, for example, advocates adoption of a bright-line test that would require at least a 75 percent equity and a 100 percent voting interest in the control group to be held by "qualifying" entities. Columbia PCS maintains that designated entities will be unable to raise sufficient capital unless this clarification is made. EATEL and CTIA maintain that the 100 percent equity requirement for minority and women-owned control groups is too restrictive for entities already in existence. Instead, they argue that businesses which are in fact *controlled* by women and/or minorities, but which have numerous non-controlling shareholders (including some that are neither women nor minorities), should be eligible for the preferences we adopted for minority and women-owned businesses. BET also requests clarification that a control group may be comprised of a single individual.

61. Omnipoint, Columbia PCS, CTIA and Lehman Brothers contend that the 25 percent minimum equity ownership restriction is too high and that designated entities will face insurmountable difficulties arranging financing if it is not reduced. To remedy this problem, Lehman Brothers proposes two alternative solutions. First, for publicly traded companies, Lehman proposes that public shareholders with less than 5 percent equity should be counted towards the control group's 25 percent equity threshold. Lehman maintains that this proposal would permit control group equity to be diluted by new shareholders, but not below a minimum equity level (Lehman recommends 10 percent). Second, Lehman suggests that all designated entities should be permitted to dilute their 25 percent equity interests in the following circumstances: (a) Not earlier than one year after license grant, to dilute control group equity to a total of not less than 20 percent; (b) not earlier than two years, to dilute control group entity to a total of not less than 15 percent; and (c) not earlier than three years to dilute control group equity to a total of not less than 10 percent. Lehman argues that this proposal would provide designated entities efficient access to capital, thereby improving their competitive position. CTIA recommends that an applicant should be eligible to bid on the C and F blocks with at least 10 percent equity. Lehaman Brothers requests that the Commission modify its control group definition to provide that members of the control group receive dividends, profits and regular and liquidating distributions in proportion to the actual possession of equity held, rather than in proportion to their interest in the total equity of the applicant. Lehman Brothers contends that our rules could be interpreted to mean that such distributions must be paid on options held but not exercised by control group members, rather than on the basis of actual shares held.

62. After considering the record, and as described below, we modify our rules to allow certain noncontrolling investors who do not qualify for the entrepreneurs' block or as a small business to be investors in an applicant's control group. We also allow entities that are controlled by minorities and/or women, but that have investors that are neither minorities nor women, to be part of the control group. We agree with petitioners that some accommodation should be made in our regulations to allow participation in an applicant's control group by existing firms controlled by designated entities or entrepreneurs that have investors that, if attributed, would cause the applicant to exceed the small business or entrepreneurs' blocks financial caps

or, for minority or women-owned applicants, investors that are not minorities or women. We will therefore modify our definition of a minority and women-owned business to include preexisting companies that are controlled by women or minorities but have noncontrolling investors in the control group who are not minorities or women. Similarly, we will allow preexisting companies that, in aggregate, meet our entrepreneurs' block and small business size standards to be members of the control group even if one or more of the noncontrolling investors in those companies would disqualify the company based on its gross revenues or total assets. We believe that these rule changes will provide a reasonable balance between the need to ensure that designated entities have a significant economic investment in the applicant and the financing realities of a PCS venture.

63. We also agree with petitioners that it is not optimal to require the qualifying control group members to hold at least 25 percent of the applicant's equity. The record indicates that in many cases, designated entities and entrepreneurial principals will have limited capital to contribute to the applicant's equity and that nonontrolling investors will be unwilling to advance funds to enable the designated entity (even one with management expertise) to reach the 25 percent threshold. Thus, without some modifications to our rules, designated entities could face insurmountable difficulties in arranging financing. We therefore conclude that we should modify our rules to address petitioners' concerns, while balancing the need to ensure meaningful equity participation by "qualifying" control group members.

64. Specifically, we will retain the 25 percent minimum equity requirement for the control group, but we will require only 15 percent (*i.e.*, 60 percent of the control group's 25 percent equity contribution) to be held by qualifying, controlling principals in the control group (*i.e.*, minorities, women or small/entrepreneurial business principals). For example, if the applicant seeks minority or women-owned status, the 15 percent equity (as well as 50.1 percent of the voting stock of the applicant) must be owned by control group members who are minorities and/or women. If the applicant seeks small business status, 15 percent of the equity must be held by control group members who, in the aggregate, qualify as a small business.[35] The composition of the principals of the control group determines whether the applicant qualifies for bidding credits, installment payments and reduced upfront payments. The 15 percent may be held in the form of options, provided these options are exercisable at any time, solely at the holder's discretion, and at an exercise price equal to or less than the current market valuation of the underlying shares at the time of short-form filing. The remaining 10 percent (*i.e.*, 40 percent of the control group's minimum equity contribution) may be held in the form of either stock options or shares, and we will allow certain investors that are not minorities, women, small businesses or entrepreneurs to hold interests in such shares or options. Specifically, we will allow the 10 percent portion to be held in the form of shares or stock options by: (1) Investors in the control group that are women, minorities, small businesses or entrepreneurs; (2) individuals who are members of an applicant's management team (which could include individuals who are not minorities or women or individuals who have affiliates that exceed the entrepreneurs' blocks or small business size thresholds); (3) existing investors of businesses in the control group that were operating and earning revenues for two years prior to December 31, 1994; or (4) noncontrolling institutional investors.

65. The Commission also adopted an alternative to the 25 percent minimum equity requirement for minority and women-owned businesses, which permits a single investor to hold as much as 49.9 percent of its equity, provided the control group holds at least 50.1 percent. Several petitioners have expressed similar concerns with respect to the need to revise the 50.1 percent requirements. Therefore, in tandem with, and for the same reasons as, the modifications to the 25 percent equity requirement, we make similar modifications to the rules governing the 50.1 percent minimum equity requirement. Accordingly, where a minority or women-owned business uses the 50.1 percent minimum equity option, we will require only 30 percent of the total equity to be held by the principals of the control group that are minorities or women. The 30 percent may be held in the form of options, provided these options are exercisable at any time, solely at the holder's discretion, and at an exercise price equal to or less than the current market valuation of the underlying shares at the time of short-form filing. The remaining 20.1 percent may be made up of shares and/or options held by investors that are not women or minorities under the same criteria described in paragraph 64 above. That is, the 20.1 percent portion of the control group's equity may be held in the form of shares or stock options by any of the following: (1) Investors in the control group that are minorities, women, small businesses or entrepreneurs; (2) individuals who are members of an applicant's management team (which could include individuals who are not minorities or women, or individuals who have affiliates that exceed the entrepreneurs' blocks and small business size standards); (3) existing investors of businesses in the control group that were operating and earning revenues for two years prior to December 31, 1994; or (4) noncontrolling institutional investors.[36]

66. In addition, the control group minimum equity requirement will be reduced three years from the date of license grant as suggested by Lehman Brothers, but the control group must still retain voting control (*i.e.*, 50.1 percent of the vote). According the control group the option to reduce the equity requirement accommodates the needs of designated entity licensees to raise capita as they build out their systems. Significantly, the three-year mark corresponds with the end of the no transfer period under our license holding rule. In the case of a licensee that has chosen the 25 percent minimum equity option, the principals

[35] For instance, if a preexisting company wants to qualify as a small business control group, its gross revenues and total assets will be added to the gross revenues and assets of each of its controlling shareholders and to those of all affiliates. The resulting sum must be under $40 million in gross revenues and $500 million in total assets. The gross revenues and total assets of the company's preexisting, noncontrolling shareholders will be ignored, however.

[36] For our purposes, we define institutional investors in a manner that is similar to the definition that is used by the Commission in the attribution rules applied to assess compliance with the broadcast multiple ownership; rules. We modify that definition slightly, however, to fit this service. Specifically, we expect that investment companies will be important sources of capital formation for designated entities. Accordingly, we adopt a definition that specifically includes venture capital firms and other smaller investment companies that may not be included in the definition of investment companies found in 15 U.S.C. 80a-3 (which is cited in our broadcast rules at 47 CFR 73.3555 Note 2(c)). Specifically, we define an institutional investor as an insurance company, a bank holding stock in trust accounts through its trust department, or an investment company as defined in 15 U.S.C. 80a-3(a) without reference to, or incorporation of, the exemptions set forth in 15 U.S.C. 80a–3(b) and (c); provided that, if such investment company is owned, in whole or in part, by other entities, then such investment company, such other entities and the affiliates of such other entities, taken as a whole, must be primarily engaged in the business of investing, reinvesting or trading in securities or in distributing or providing investment management services for securities. *See* § 24.720(h).

in the control group will only be required to hold 10 percent of the licensee's equity after three years, with no further equity requirements imposed on the control group. Similarly, in the case of a licensee that has used the 50.1 percent minimum equity option, the principals in the control group will be required to hold 20 percent of the licensee's equity, and no further equity requirements will be imposed on the control group.

67. After reviewing the record, we are persuaded that these changes will afford the control group greater flexibility in raising the necessary equity for participation in the entrepreneurs' blocks. In particular, we are allowing that 10 (or 20.1) percent of the equity can come from sources that otherwise would not qualify for the control group. In making these limited changes to the control group equity requirements, we believe the amended rules will: (1) promote investment in designated entities generally; (2) attract and promote skilled management for applicants; and (3) encourage involvement by existing firms that have valuable management skills and resources to contribute to the success of applicants.

68. With respect to our decision to allow investment in the control group by investors of preexisting firms, the business involved must be a going concern that has been in existence for a reasonable period of time prior to adoption of our rules in order to avoid any sham arrangements. Specifically, the business involved must have been operating and earning revenues for at least two years prior to December 31, 1994 to qualify for this provision. While we want to relax the control group equity requirements slightly, we also recognize there may be an incentive for nonqualifying investors to purchase substantial interests in "preexisting" businesses unless we place some restrictions on those investors. As a practical matter, however, we realize that the identity of noncontrolling investors in such businesses, particularly if they are publicly-traded companies, will change regularly. We intend that the allowed equity (10 or 20.1 percent) portion should be held by existing investors in such a company although we will not place limits on who qualifies as such an investor. We emphasize, however, that we will scrutinize any significant equity restructing of preexisting companies that occurs after adoption of our rules. We would presume that any change of equity by an investor in a preexisting company (that is in an applicant's control group) that is five percent or less would not be significant, and the burden is on the applicant to demonstrate whether changes in equity that exceed five percent are not significant.

69. We also agree with petitioners and commenters that greater flexibility should be afforded to any applicant whose ownership structures were established before our designated entity requirements were formulated. Therefore, as a further modification, if the sole control group member of an applicant is a business that was in existence and had earnings from operations for at least two years prior to December 31, 1994, we offer the option that control group principals establishing the applicant's status as a minority and/or women-owned business, small or entrepreneurial business may hold 10 percent of the applicant's equity if the 25 percent equity option is used, or a 20 percent equity interest if the 50.1 percent equity option is used.[37] The balance of the control group's equity contribution (*i.e.*, 15 or 30.1 percent) must be held in the form of shares or stock options by any of the following: (1) Qualifying principals in the control group; (2) individuals who are members of the applicant's management team (which could include "nonqualifying" individuals); or (3) existing investors of business in the control group that were operating and earning revenues for two years prior to December 31, 1994.

70. The lower equity requirement of 10 percent for preexisting companies that are sole control group members addresses the concerns of these firms, many of which have already undergone successive rounds of financing that may have diluted the qualifying investors' original equity interest in the business. Existing firms that were structured prior to the adoption of the entrepreneurs' blocks regulatory scheme are less likely to become "fronts" for business that would not qualify for the entrepreneurs' block or the special provisions accorded designated entities. This option is solely intended to accommodate long-standing capital structures of applicants that have already been required to dilute equity ownership to raise capital. Thus, we will require that the portion of equity not held by qualifying principals (15 or 30.1 percent, as the case may be) to be comprised entirely of existing investors of the company (unless the equity is held by management or qualified principals of the control group). As we stated above, we recognize that for many companies, especially those that are publicly-traded, the identities of noncontrolling investors change regularly. Thus we will not place limits on the amount of time a particular individual or entity must have been an investor in the company. We emphasize, however, that we will scrutinize carefully applicants that engage in significant equity reshuffling after adoption of our rules.[38] By giving preexisting applicants additional flexibility, we do not intend to place other applicants at a competitive disadvantage by permitting greater capital infusion from institutional investors.

71. In implementing our requirements, we will provide that where the interests in question are not held directly in the applicant, a multiplier will be used to calculate the effective interests held by the control group principals toward fulfillment of the minimum equity requirement. In addition, we will use a multiplier to calculate the interests of noncontrolling investors in the control group so as to assess compliance with the 25 percent nonattributable equity limit.[39] A multiplier is a traditional tool used by the Commission to calculate the effective ownership levels of investors that, through one or more intervening corporations, hold indirect interests in a licensee.[40]

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[37] This equity may be held outright or in the form of options provided these options are exercisable at any time, solely at the holder's discretion, and at an exercise price equal to or less than the current market valuation of the underlying shares at the time of the filing of the short-form application.

[38] We will presume that a change in equity by an investor (in a preexisting business) of five percent or less is not significant, and the burden is on the applicant to demonstrate whether equity changes above five percent are not significant.

[39] We illustrate the application of a multiplier as follows: If a member of a minority group or a woman holds a 25 percent equity interest in a corporate member of the control group and that corporation holds a 25 percent equity interest in the applicant, the effective interest for purposes of assessing compliance with the minimum equity requirement would be 6.25 percent (*i.e.*, $0.25 \times 0.25 = 6.25$). This falls well below the 25 percent requirement of our original rule. Correspondingly, if a noncontrolling (and nonqualifying) investor holds a 40 percent interest in a corporate member of a control group and that corporation holds 25 percent of the applicant's total equity, the effective interest held in the applicant by the investor would be 10 percent (*i.e.*, $0.25 \times .40 = 10.00$). If that same investor also owns more than 15 percent of the applicant's equity outside of the control group, it would exceed the 25 percent non-attributable equity limit.

[40] *See, e.g.*, 47 CFR 73.3555 Note 2(d) (indicating that attribution ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by a party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain). We note that the multiplier used here does not employ the 51 percent control exception used in the broadcast context since we are using a multiplier only to determine a control group member's equity investment, not whether such

72. Additionally, in a written *ex parte* presentation, Metricom requests that we exempt small, publicly-traded corporations with widely dispersed voting stock ownership from our control group requirement. Metricom contends that the control group concept is unworkable for small, publicly-traded companies, because it would not be possible to identify a group of shareholders that own 50.1 percent of the corporation's voting stock. As a result, such corporations could be unable to establish eligibility for the entrepreneurs' blocks, or status as a small business. Metricom proposes a test for identifying small, publicly-traded corporations with widely-dispersed voting stock ownership that closely follows guidelines used by the Securities and Exchange Commission.

73. We will adopt Metricom's proposal, and create a limited exemption from the control group requirement for small, publicly-traded corporations with widely dispersed voting stock ownership. As Metricom points out, a significant number of small, publicly traded companies have such widely dispersed voting stock ownership that no identifiable control group exists or can be created. Without a control group, such companies may not be able to bid for entrepreneurs' block licenses or quality for small business status even though their gross revenues and assets meet our financial caps. It was not the Commission's intent that these companies be denied the opportunity to bid on the entrepreneurs block, or to qualify for treatment as a small business.

74. Consistent with Metricom's proposal, a small, publicly-traded corporation will be found to have dispersed ownership of voting stock if no person (including any "group" as that term is used in the Securities Exchange Act of 1934)[41] has the power to control the election of more than 15 percent of the corporation's directors. In addition, we will require that no person shall have an equity interest in the applicant for more than 15 percent, which is consistent with out revised equity requirements for small business applicants utilizing a control group. Under those requirements small business principals in an applicant's control group must hold at least 15 percent interest in the applicant (in combination with an additional, 10 percent equity interest that may come from "nonqualifying" sources). A 15 percent equity requirement is appropriate here because the same percentage of equity is needed for a small business applicant's control group to satisfy its equity obligations (unless it is a preexisting company), and because a 15 percent equity cap is likely to ensure that no control questions arise. We, emphasize that this control group exemption will only apply to an applicant or licensee that is not controlled by any entity or group other than corporate management, as should be the case where there is no identifiable group of shareholders holding a controlling interest in the company's voting stock. A small corporation that has dispersed voting stock ownership and no controlling affiliates will therefore not be required to aggregate with its own revenues and assets the revenues and assets of management and shareholders for purposes of entrepreneurs' block eligibility or small business status.

75. Small, publicly-traded corporations that choose to exempt themselves from the control group requirement must own all the equity and voting stock of the applicant or licensee. We find their ability to reply on the corporation's existing capital structure to introduce new passive investment on an ongoing basis provides a level of flexibility that is comparable to applicants/licensees with an identifiable control group. We note that minority and/or women-owned businesses would not qualify for this exemption since a control group is necessary to determine whether the applicant is controlled by minorities or women.

76. Finally we consider a few other points. First, as BET requests, we clarify that an individual can be the control group of an applicant, so long as our equity requirements and other provisions are satisfied. In response to Lehman Brothers' concerns, we clarify the control group requirements to provide that control group investors must receive dividends, profits, and regular and liquidating distributions in proportion to their actual possession of equity holdings, rather than in proportion to their interest in the total equity (which may include options not yet exercised). Finally, we see no conflict in our rules with a Pacific Telesis' proposal to allow designated entities and their partners to allocate amongst themselves tax benefits on a non-pro rata basis.

De Facto Control Issues and Management Contracts

77. In the *Fifth Report and Order*, we provided that the designated entity control group must have *de facto* as well as *de jure* control if the applicant and must be prepared to demonstrate that it controls the enterprise. The requirement of *de facto* control arises from Section 310(d) of the Communications Act, 47 U.S.C. 310(d), which prohibits any transfer or assignment of license or transfer of control of a corporation holding a license without the Commission's authorization. To help in determining what constitutes a transfer of control under this statutory provision we follow precedent defining *de facto* control.[42] We also apply this standard in the case of designed entities to determine whether the applicant is in fact controlled by qualifying individuals or entities. Several petitioners seek reconsideration or clarification of our *de facto* control standard, particularly as it applies to questions of *de facto* control by the designated entity control group and use of management contracts by licensees.

Definition of De Facto Control

78. The *Fifth Report and Order* does not set forth specific guidelines defining *de facto* control in the entrepreneurs' block context. Because issues of *de facto* control are necessarily fact-specific, we have treated the issue as one to be handled on a case-by-case basis.[43] Consequently, a wide variety of factors may be relevant to determining whether a control group Has *de acto* control of a particular applicant, applying in the entrepreneurs' blocks.

79. Some petitioners ask us to provide more specific guidelines with respect ti what dies and does not constitute *de facti* control. Omnipoint states that such guidelines would help designated entity applicants in setting up their management structure Others seek assurance that designated entity control groups can meet the *de facto* control test even if they enter into agreements containing "standard" covenants for the protection of non-majority or non-voting shareholders, *e.g.*, supermajority voting requirements for major corporate changes, liquidation preference (commonly in the form of preferred stock), rights of first refusal, veto rights concerning particular corporate

member has control or substantial influence over the applicant.

[41] 15 U.S.C. 78(a) *et seq.* (Section 13(d) and Section 13(g) state that "when two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities in an issuer, such syndicate or group shall be deemed a 'person' and therefore required to make the disclosures indicated in those subsections").

[42] *See Rochester Telephone* v. *United States*, 23 F. Supp. 634, 636 (S.D.N.Y 1938), *aff'd*, 307 U.S. 125 (1939); *Lorain Journal Co.* v. *FCC*, 351 F.2d 824, 827–828 (D.C. Cir. 1965, *cert. denied*, 383 U.S. 967 (1966).

[43] *Stereo Broadcasters, Inc.*, 55 FCC 2d 819, 821 (1975), *modified*, 59 FCC 2d 1002 (1976).

transactions, or the preemptive right to purchase stock to prevent dilution.

80. We continue to believe that determinations of *de factir* control for purposes of determining designated entity eligibility for entrepreneurs' blocks are inherently factual therefore will require case-by-case determination Nevertheless, to provide a level of certainty for designated entities and to ensure that designated entities maintain *de facto* control, we believe it is appropriate to articulate some guidelines for defining *de facto* control in this context. We therefore clarify that a designated entity or entrepreneurs' control group must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant (1) The control group must constitute or appoint more than 50 percent of the board of directors or partnership management committee; (2) the control group must have authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; (3) the control group must play in integral role in all major management decisions; and (4) in the case of applicants controlled by minorities and women, at least one minority or female control group member must have senior managerial responsibility over day-to-day operations, *e.g.*, as President or CEO of the licensee.[44] We emphasize, however, that these criteria are guidelines only and are not necessarily dispositive of the issue of *de facto* control in all situations. Even where these criteria are met, therefore, the determination of whether *de facto* control exists will depend on the totality of circumstances in the particular case.

81. With respect to provisions benefitting non-majority or non-voting shareholders, we recognize that inclusion of such provisions in a common practice to induce investment and ensure that the basic interests of such shareholders are protected. For example, many corporations require a supermajority of shareholders to approve major corporate decisions such as taking on additional debt, significant corporate acquisitions, or issuance of new stock. Similarly, strategic investors making large passive equity contributions to a company frequently insist on a right of first refusal exercisable in the event that a third party seeks to purchase the company. We agree with petitioners that allowing such provisions enhances the ability of designated entities to raise needed capital from strategic investors, thereby bolstering their financial stability and competitive viability. We believe, however, that precedent provides guidance in determining the appropriate extent to which these safeguards may protect investment. We therefore clarify that under our case law non-majority or non-voting shareholders may be given a decision-making role (through supermajority provisions or similar mechanisms) in major corporate decisions that fundamentally affect their interests as shareholders without being deemed to be in *de facto* control.[45] Such decisions generally include: (1) Issuance or reclassification of stock; (2) setting compensation for senior management; (3) expenditures that significantly affect market capitalization; (4) incurring significant corporate debt or otherwise encumbering corporate assets; (5) sale of major corporate assets; and (6) fundamental changes in corporate structure, including merger or dissolution.[46] We also clarify that non-majority or non-voting investors may hold rights of first refusal, provided that right is exercisable only to prevent dilution of the investor's interest or a transfer of control by the control group to a third party. We also observe that we would not look favorably upon an assignment or transfer of a license that resulted from rights of first refusal being exercised if (1) the holder of such rights was a manager of the licensee, and (2) there was evidence the manager had not acted to maximize the profitability of the business in order to ensure that the options would be exercised at a lower price.

82. While we conclude that the provisions described above will generally not be considered to deprive an otherwise qualified control group of *de facto* control, some proposals made by petitioners and comments to benefit non-majority shareholders would violate this standard. For example, non-majority shareholders should not have the power to select or replace members of the control group or key employees of the corporation. Further, as discussed in the *Second Report and Order* in this docket, we do not intend to restrict the use of preferential dividends and liquidation preferences. We will scrutinize, however, any mechanisms that deprive the control group of the ability to realize a financial benefit proportional to its ownership of the applicant. Finally, we emphasize that any final determination of whether a control group has yielded *de facto* control to outside investors must depend on the circumstances of the particular case. For example, while certain provisions benefitting non-majority investors may not give rise to a transfer of control when considered individually, the aggregate effect of multiple provisions could be sufficient to deprive the control group of *de facto* control, particularly if the terms of such provisions vary from recognized standards.[47] To facilitate review of such provisions, we will amend the Form 401 (long-form) [48] to require winners of C and F block auctions to disclose any such convenants and terms that protect non-majority investors' rights in the licensee.

Management Contracts

83. An issue of concern to many petitioners and commenters is whether designated entities may enter into management agreements with third

[44] These same four indicia will be used to determine whether the "qualified" members of the control group (*i.e.*, women, minorities, and small business or entrepreneurial principals) have *de facto* control over the control group. For example, in a women-owned limited partnership applicant with one corporate general partner, the women shareholders of that corporation must constitute, or be able to appoint, more than 50 percent of the board, appoint and fire senior executives, play an integral role in all major management decisions, and at least one of the women must have senior managerial responsibility over day-to-day operations.

[45] *See. e.g., News International*, 97 FCC 2d 349, 357–66, (1984) (describing minority shareholder voting and consent rights that serve to protect interest and do not constitute a transfer of control); *Data Transmissions*, 44 FCC 2d 935, 936–37 (1974) (same).

[46] Our most recent decision on such voting and consent rights addressed an agreement between MCI Communications Corporation (MCI) and British Telecommunications plc (BT). In that *Order*, we evaluated whether particular voting and consent rights intended to protect BT's investment in MCI triggered a transfer of Control. *See Declaratory Ruling and Order*, 9 FCC Rcd (1994). We indicated that covenants that give a party the power to block certain major transactions of a company do not in and of themselves represent the type of transfer of corporate control envisioned by Section 310(d) of the Communications Act. We found it significant, however, that while BT could block certain major transactions by MCI, BT could not compel MCI to engage in such major transactions. Thus, we concluded that BT's power was permissibly limited to protecting its own investment in MCI. *Id.* 9 FCC Rcd at 3962. *See Also McCaw Ceullar Communications, Inc.*, 4 FCC Rcd 3784 (Com. Car. Bur. 1989).

[47] In assessing whether such provisions vary from recognized standards, the Commission may assess whether the provisions are accepted measures to protect financial interests of nonctrolling investors. *See, e.g.* Model Business Corporations Act and Uniform Limited Partnership Act.

[48] FCC Form 600 will replace both Form 401 (used under Part 22 of the Commission's Rules) and Form 574 (used under Part 90 of the Commission's Rules). *Third Report and Order* in Gen. Docket No. 93–252, FCC 94–212 (released September 23, 1994) ¶ 286. Applicants must use Form 600 beginning January 2, 1995. *Id.* ¶¶ 298, 414. the Commission has received a Motion for Stay of the January 2, 1995 effective date, which is currently pending. National Association of Business and Educational Radio, Inc., *Motion for Partial Stay of the Third Report and Order* in Gen. Docket No. 93–252, filed November 4, 1994.

parties without being deemed to have engaged in an unauthorized transfer of control. Although we did not expressly address this issue in the *Fifth Report and Order*, we have traditionally scrutinized common carrier management agreements for this purpose under the *Intermountain Microwave* test,[49] and we recently extended the use of this test to all CMRS providers in our *Fourth Report and Oder* in Gen. Docket 93–252.[50] Under this test, a licensee may enter into a management agreement with a third party provided that the licensee retains exclusive responsibility for operation and control of the licensed facilities, as determined by the following six factors: (1) Unfettered use of licensed facilities and equipment; (2) day-to-day operation and control; (3) determination of and carrying out of policy decisions; (4) employment, supervision, and dismissal of personnel; (5) payment of financial obligations; and (6) receipt of profits from operation of the licensed facilities.

84. In its petition, Pacific Bell contends that the *Intermountain Microwave* test needs to be clarified to eliminate uncertainty about the permissible scope of management agreements. Pacific Bell notes that the D.C. Circuit has recently remanded a case in which the Commission purportedly misapplied the *Intermountain* test and argues that further guidance from the Commission is therefore needed to prevent sham agreements between designated entities and third party managers. Other parties also support the view that the Commission should clarify its standards regarding management contracts, but do not necessarily agree about what standard should be anticipated. NABOB, for example, argues that the *Intermountain* test is too rigid and that a more flexible standard should be applied to designated entities who enter into management agreements. Columbia PCS, on the other hand, contends that the Commission should apply a stricter standard by limiting managers to performing discrete functions on a subcontractor basis as opposed to assuming broad responsibility for system management.

85. We have recently held in Gen. Docket 93–252 that the *Intermountain Microwave* standard applies to all CMRS licensees who enter into management contracts. Because we have determined that broadband PCS licensees will be presumptively classified as CMRS providers,[51] we reaffirm the applicability of the *Intermountain* standard here. We disagree with NABOB's view that this standard is not sufficiently flexible to account for the management needs of designated entities. The six *Intermountain* factors provide reasonable benchmarks for ensuring retention of control by the licensee while allowing for full consideration of the circumstances in each case. In the case of designated entity applicants, they will ensure that designated entities participate actively in the day-to-day management of the company while allowing reasonable flexibility to obtain services from outside experts as well. We believe that relaxing the *Intermountain* standard, by contrast, could give rise to sham agreements in which designated entities do not exercise actual control.

86. While we reject the view that scrutiny of management contracts should be relaxed, we also disagree with the view that such contracts should be subject to a stricter standard than we have applied previously. We conclude that limiting managers to discrete "subcontractor" functions, as Columbia PCS proposes, could prevent designated entities from drawing on managers with broad expertise. Moreover, whether a manager undertakes a large number of operational functions is irrelevant to the issue of control so long as ultimate responsibility for those functions resides with the licensee.

Attribution Rules

Voting Equity

87. The *Fifth Report and Order* provided that an investor may hold a 25 percent passive equity interest in the entrepreneurs' block applicant before its interest is attributable for purposes of our eligibility rules.[52] In addition, the passive equity investment for closely-held companies could include no more than five percent voting equity, while publicly-traded companies could include no more than 15 percent voting equity. In a subsequent *Order*, we increased the threshold percentage of non-attributable voting equity from five percent to 15 percent for closely-held companies,[53] Similarly, for the alternative equity option available to women and/or minority principals, the 49.9 percent passive investment could include no more than 15 percent voting equity.

88. Petitioners request that the Commission increase the threshold percentage of non-attributable voting equity from 15 percent to an amount ranging from 20 percent to 49 percent. In addition, petitioners request that the Commission clarify whether the existing rules permit nonattributable investors outside of the control group to hold a less than 25 percent or a less than or equal to 25 percent equity interest in the applicant. Also, on reconsideration of our *Order on Reconsideration* parties have debated our decision to raise the voting equity threshold for closely-held applicants from five to 15 percent. AIDE argues that raising the voting level of closely-held applicants is imprudent because it increases the likelihood that big business will control the applicant. AMP disagrees with AIDE that 15 percent voting control would increase the likelihood of shams, because 15 percent is still not a controlling percentage. Rather, AMP argues that increasing the permissible level of voting equity will enable applicants to attract more equity financing, thereby increasing the applicant's likelihood of success.

89. We amend our attribution rules to raise the voting equity threshold that qualifies an investor as having an attributable interest in an applicant to 25 percent. We will raise the voting equity level for both publicly-traded and closely-held corporations, and will apply the 25-percent threshold for the 25/75-percent equity option available to all applicants and to the 49.9/50.1 percent equity option additionally available to minority and/or women applicants. We observe that 25 percent is the percentage suggested by both CTIA and BET. We agree with CTIA that investors will be more likely to invest in new companies if they have the ability to protect their investment through increased voting rights. We also agree that a 25-percent voting interest will not convey a significantly greater risk of control than a 15-percent voting interest. BET asserts that higher voting thresholds will enable a larger number of existing companies—those which have established financial structures with a higher percentage of voting stock owned by non-controlling

[49] *See Intermountain Microwave, Inc.*, 24 Rad. Reg. (P&B) 983 (1963) *Intermountain Microwave*). *See also Memorandum Opinion and Order* in CC Docket No. 90–257 (*La Star Cellular Telphone Company*), FCC 94–299 (adopted Nov. 18, 1994; released ____) (on remand from the D.C. Circuit).

[50] *Fourth Report and Order*, Gen. Docket No. 93–252, FCC 94–270 (released Nov. 18, 1994), ¶20. In this order, we also concluded that management contracts could be considered "attributable interests" for purposes of the PCS/cellular/SMR spectrum cap even if they did not confer control under the *Intermountain Microwave* standard. This conclusion applies only for spectrum cap purposes, however, and does not affect underlying analysis of when a mangement affect our undering analysis when a management contract gives rise to an unauthorized transfer of control. *Id.* at ¶25.

[51] *See Second Report and Order*, Gen. Docket No. 93–252, 9 FCC Rcd 1411 (1994) at ¶ 119.

[52] *Fifth Report and Order*, FCC 94–178 at ¶ 158.

[53] *Order on Reconsideration*, FCC 94–217 at ¶ 8–10.

stockholders—to compete in the entrepreneurial block. Furthermore, in other contexts, Congress has used a 25-percent threshold as a measure of determining control. For example, under Section 310(b) of the Communications Act, 47 U.S.C. 310(b), foreign companies are permitted to directly or indirectly control up to 25 percent of CMRS licensees. We believe that in this context as well, a 25-percent threshold strikes an appropriate balance between the need to encourage investment and our goal of ensuring that designated entities remain in clear control. Finally, for purposes of clarification, the maximum permissible nonattributable equity level may be no greater than 25 percent of the applicant's total equity and includes the right to vote such share (*e.g.*, through voting trusts or other arrangement).[54]

90. Additionally, however, to discourage large investors from circumventing our equity limitations for nonattributable investors, we clarify that persons or entities that are affiliates of one another, or that have an "identity of interests," will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining compliance with our maximum nonattributable equity limits. We will aggregate their ownership interests in calculating their total equity interests in the applicant and in determining whether their gross revenues and assets will be attributed to the applicant. Thus, for example, if two entities form a joint venture or consortium to apply for broadband PCS A and B block licenses, they have an identity of interests that is characteristic of affiliates, and will be treated as a single entity when investing in the same entrepreneurs' block applicant. *See* 47 CFR 24.72(1)(3); *see also* 47 CFR 24.204, note 1. Consequently, under our rules we would aggregate all equity investments in the applicant and count it as a single, possibly attributable investment in the applicant where such investors have an identity of interests.

Ownership Interests

91. The *Fifth Report and Order* states that ownership interests are to be calculated on a fully diluted basis and that all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder have been fully exercised. Designated entities are required to disclose any business five percent or more of whose stocks, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant.[55]

92. Petitioners and *ex parte* commenters request that we clarify our rules regarding the treatment of various ownership instruments such as warrants, stock options and convertible debentures. Additionally, commenters have asked whether rights of first refusal are considered options and how stock "calls" and "puts" will be treated. A "put" option gives the holder the right to sell a share of stock at a specified price at any time up to the expiration date. Conversely, a "call" option gives the holder the right to buy a share of stock at a specified price, known as the "exercise price."

93. In general, we will treat stock options as fully exercised with the exception of some ownership instruments. We recognize that some forms of options are common and often beneficial to the management of a company. Many companies, for example, include stock options in senior management compensation packages. We also recognize that treating options as fully exercised will encourage companies to hire minorities and women for top management positions, because any options they receive will count toward the equity eligibility requirement.

94. We decide that for purposes of calculating ownership interests, however, some ownership instruments will not be treated as "fully diluted", or will not be considered options generally. For example, we will not consider rights of first refusal as options when calculating ownership interests.[56] Rights of first refusal differ from other types of options because they cannot be exercised unless there is a proposed sale to a third party. Sales and transfers to third parties are restricted during the holding period, so rights of first refusal do not threaten the composition of designated entities.[57] At the end of the five-year period, it will still be the designated entity's decision as to whether to sell the business, which ensures that the designated entity controls the decision whether to sell. We agree that without these rights, investors are likely to shy away from investing in designated entities. As Pacific Telesis and BellSouth point out, rights of first refusal are a valued safeguard mechanism because they give investors some control over the entry of new business associates. They also enable investors to prevent their own shares from becoming dilutes as a result of a sale.

95. "Put" options held by the designated entity—which can be realized only after the licensee can permissibly transfer the license—will not be treated as fully diluted for purposes of determining ownership interests. Put options held by the designated entity leave the ownership decision in the designated entity's control and do not force an unwanted sale upon the designated entity. We observe, however, that while such options will not be factored in for purposes of determining *de jure* control, we will continue to look at whether put options in combination with other terms to an agreement deprive an otherwise qualified control group of *de facto* control over the applicant. Thus, a "put" in combination with other terms to an agreement may result in an applicant not retaining *de facto* control. For example, if an agreement between a strategic investor and a designated entity provides that (1) the investor makes debt financing available to the applicant on very favorable terms (*e.g.*, 15-year term, no payments of principal or interest for six years) and (2) that the designated entity has a one-time put right that is exercisable at a time and under conditions that are designed to maximize the incentive of the licensee to sell (*e.g.*, six years after issue, option to put partnership interest in lieu of payment of principal and accrued interest on loan), we may conclude that *de facto* control has been relinquished. "Call" options held by investors will be considered exercised immediately to calculate ownership levels because they can be used to force a designated entity to sell its ownership interests. Finally, we observe that such a call option would vest an impermissible degree of control in the applicant's so-called "noncontrolling" investors.

96. In summary, agreements between designated entities and strategic investors that involve terms (such as management contracts combined with rights of first refusal, loans, puts, etc.) that cumulatively are designed financially to force the designated entity into a sale (or major refinancing) will constitute a transfer of control under our rules. We will look at the totality of circumstances in each particular case.

[54] For example, an investor holding 25 percent of an applicant's voting stock will not be considered a nonattributable equity investor if it also has the right, through a voting trust or other arrangement, to vote additional shares.

[55] *See* 47 CFR 24.813(a)(1)) (Form 175 and Form 401 application requirements).

[56] A "right of first refusal" is an agreement between parties which grants an investor the right to match a purchase offer from a third party.

[57] *See* 47 CFR 24.839(d) (restrictions on assignment or transfer of control of C and F block licensees). In any event, the Commission would have to approve any sale or transfer that would result from a noncontrolling investor exercising a right of first refusal.

We emphasize that our concerns are greatly increased when a single entity provides most of the capital and management services and is the beneficiary of the investor protections.

Special Provisions For Designated Entities

Bidding Credits

97. In the *Fifth Report and Order*, we determine that bidding credits were necessary to better ensure that women and minority-owned businesses and small businesses have meaningful opportunities to participate in broadband PCS. Accordingly, our rules provided that small businesses will receive a 10 percent credit, women and minority-owned businesses will receive a 15 percent credit, and small businesses owned by women and minorities will receive an aggregate credit of 25 percent.[58] Our decision in the *Fifth Report and Order* to enhance the effectiveness of the entrepreneurs' blocks through the addition of bidding credits reflected our expectation that broadband PCS will be a capital intensive undertaking. We stated that bidding credits would function as a discount on the bid price a firm will actually have to pay to obtain a license and, thus, would directly address the obstacles to raising capital encountered by small, women and minority-owned firms.

98. Several petitioners request that we increase the level of bidding credits. For example, while some petitioners argue in favor of higher bidding credits for all designated entities, others seek to raise the bidding credit for women and minority-owned businesses, or only for minority-owned small businesses. Many of these petitioners find support in our *Third Memorandum Opinion and Order* in this docket, where we raised the bidding credit for minority and women-owned businesses bidding on regional narrowband PCS licenses from 25 percent to 40 percent.[59] Two petitioners contend that rural telephone companies should receive a 10 percent bidding credit, that would be cumulative with any other bidding credits for which the applicant would be eligible. Finally, consistent with its argument that the entrepreneurs' blocks should be abolished, GTE supports availability of bidding credits across all broadband PCS channel blocks.

99. We will retain our existing bidding credit scheme. Present levels of bidding credits, coupled with other provisions directed at the capital formation problems of designated entities, such as size limitations on the entrepreneurs' block and installment payments, are sufficient to achieve our regulatory objectives. Moreover, additional measures that we have adopted on reconsideration, including elimination of the limits on personal net worth and relaxation on the attribution of affiliates owned and controlled by minorities, will further enhance the value of the bidding credits to women and minority-owned firms in particular. We find that our action on reconsideration of the narrowband PCS auction rules does not dictate raising the bidding credit in this instance. As the *Third Memorandum Opinion and Order* makes clear, the 40 percent bidding credit for women and minorities bidding on regional narrowband PCS licenses was adopted in the absence of any entrepreneurs' blocks. Further, we state that in the insulated entrepreneurs' block setting, a 25 percent bidding credit for minority and/or women-owned small firms is more appropriate. We also find that the record does not support creation of a new bidding credit for rural telephone companies. In this regard, we agree with BET that petitioners have failed to demonstrate a historical lack of access to capital that was the basis for according bidding credits to small businesses, minorities and women. To the extent that a rural telephone company is also a small business, or minority or women-owned, then bidding credits would, of course, be available. We also decline to adopt GTE's scheme to eliminate the entrepreneurs' blocks, and distribute bidding credits throughout the broadband PCS channel blocks. As Omnipoint, Columbia PCS and ET observe, the insulation provided by the entrepreneurs' block is key to the utility of bidding credits in such a capital intensive undertaking.

Installment Payments

100. In the *Fifth Report and Order* we made installment payments available to most businesses that obtain entrepreneurs' block licenses. Installment payments directly address the significant barriers that smaller businesses face in accessing private financing. With the expectation of enormous costs associated with obtaining and operating a broadband PCS license, installment payments provide low-cost government financing that reduces the amount of private financing needed before and after the auction. Our installment payment plan was made available to all entrepreneurs' block eligibles granted licenses in the 50 largest BTAs. In the smaller BTAs where the costs of license acquisition and operation are expected to be lower, installment payments are only available to licensees owned by women and minorities, and licensees with less than $75 million in gross revenues. We also provided an "enhanced" installment payment plan for small businesses and businesses owned by women and minorities where interest-only payments were required for such entities for as long as five years from the date of license grant if the firm is both small and owned by women or minorities. By tailoring the deferral of principal payments to the needs of the particular designated entities, we promoted greater participation in broadband PCS by viable competitors.

101. Vanguard asks us to offer installment payments to all entrepreneurs' block winners for all BTAs. Without this relief, Vanguard contends that small cellular carriers that are, in fact, more likely to serve the smaller markets would be forced to comply with the same payment schedule as large carriers bidding for smaller markets. SBPCS seeks to eliminate interest on installment payments altogether, and limit availability of installment payment plans to revenue less than $75 million dollars. Hernandez requests that the Commission require bidders to demonstrate their ability to meet the terms of an installment payment plan when the short-form application is filed.

102. We will extend availability of installment payments to all entrepreneurs' block licensees, regardless of gross revenues. A key factor to the overall success of the entrepreneurs' blocks is the installment payment plan. The installment plan was established to facilitate the entry of small and minority-owned businesses into the broadband PCS market. The top 50 BTAs will be the most competitive wireless communications markets in the country and will require inordinately large amounts of capital. It will be extremely challenging for any entrepreneurs' block participant to compete in these markets. The installment plans will greatly enhance the ability of all entrepreneurs' block participants to raise capital to succeed against major, well-capitalized competitors. As Vanguard points out, disallowing installment payments to large entrepreneurs' block winners of small BTAs unfairly restricts these companies from competing for markets in which they will have a logical interest. In addition, the larger entrepreneurs would be forced to pay for BTAs on the same terms as major companies that do not qualify for the

[58] *See* 47 CFR 24.712(a)–(c).

[59] *Third Memorandum Opinion and Order*, FCC 94–219 at ¶ 58. *See also* 47 CFR 24.309(b)(2).

entrepreneurs' blocks. While we accept these arguments, and therefore extend installment payments to all entrepreneur's block licensees, we note that the terms of these payments should be less generous than those extended to smaller companies, less able to access traditional sources of capital. Therefore, we will require entrepreneurs with gross revenues exceeding $75 million to make a post-auction down payment equaling ten percent of their winning bids, but then pay the remaining 90 percent of the auction price in installments with interest charges to be fixed at the time of licensing at a rate equal to that for ten-year U.S. Treasury obligations plus 3.5 percent, with payments on both interest and principal required.

103. We decline to reduce or eliminate interest rates entirely because we believe that the present approach achieves the proper balance among our regulatory objectives. In particular, our present tailoring of interest rates to the needs of the designated entity enables licenses to be disseminated to small businesses and furthers the congressional goal of allowing taxpayers to reap a portion of the value of the licenses. Reducing or eliminating interest payments could result in very high bids, which could reduce competition and promote defaults among entrepreneurs. Such an approach could also encourage speculation instead of legitimate applicants who can attract capital. On our own motion, however we will amend 47 C.F.R. § 24.711 to permit small businesses owned by minorities and/or women to make interest-only payments for six years from the date of license grant. Under our current rules, principal payments start to come due at the same time the entrepreneur is permitted to transfer the license and immediately following the first, build-out requirement. By deferring payment of principal an additional year, we intend to assist the designated entity in avoiding an unwanted sale of business at the five-year mark in order to avoid payment of principal. Finally, for the reasons discussed in the *Fourth Memorandum Opinion and Order*, we believe that our existing requirements for broadband PCS auction applicants adequately measure an applicant's ability to pay.[60] We therefore decline to impose more stringent requirements to determine whether an applicant can meet the terms of an installment payment plan.

[60] *Fourth Memorandum Opinion and Order*, FCC 94–246, at ¶45.

Rural Telephone Company Provisions

104. In the *Fifth Report and Order*, the Commission established several provisions to help rural telephone companies become meaningful participants in the emerging PCS market. In that proceeding, we defined a rural telephone company as a local exchange carrier having 100,000 or fewer access lines, including all affiliates. In departing from the more restrictive definition adopted in the *Second Report and Order*, the Commission stated that the revised definition strikes an appropriate balance by facilitating the rapid deployment of broadband PCS to rural areas, without giving benefits to large companies that do not require special assistance. Qualified rural telephone companies are eligible for broadband PCS licenses through a partitioning system, which permits rural telephone companies to obtain licenses that are geographically partitioned from larger PCS service areas. These companies will be permitted to acquire partitioned broadband PCS licenses in any frequency block in two ways: (1) they may form bidding consortia consisting entirely of rural telephone companies to participate in the auctions, and then partition the licenses won among consortia participants; and (2) they may acquire partitioned broadband PCS licenses from other licensees through private negotiation and agreement either before or after the auction.

105. Under our rules, if a rural telephone company receives a partitioned license from another PCS licensee in a post-auction transaction, the partitioned area must be reasonably related to the rural telephone company's wireline service area that lies within the PCS service area. We recognized in the *Fifth Report and Order* that rural telephone companies will require some flexibility in fashioning areas in which they will receive partitioned licenses, so we did not adopt a strict rule concerning the reasonableness of the partitioned area.

106. Petitioners variously request the Commission modify our rural telephone company provisions. Century Telephone Enterprises, Inc. (Century) and Citizens Utilities Company (Citizens) argue that the rural telephone company definition adopted in the *Fifth Report and Order* is overly restrictive and excludes local exchange carriers that exceed the access line standard but nevertheless serve predominantly rural areas. Alternatively, Citizens requests the Commission implement waiver procedures. In addition, Hicks and Ragland and TEC urge the Commission to eliminate its partitioned service area limitations, stating that the present rules unnecessarily impede the ability of a rural telephone company to provide service in a technically and economically feasible manner. Finally, MEANS/SDN and TEC contend the rural telephone companies should be afforded the same benefits as other designated entities, including outside passive investment in rural telephone company consortia and bidding credits.

107. We generally will retain the rural telephone company provisions adopted in the *Fifth Report and Order*. We remain convinced that our definition of rural telephone company, which reflects the views of numerous parties to this proceeding, will ensure that broadband PCS will be deployed rapidly to rural areas. At the same time, it is narrowly tailored to exclude large local exchange carriers that do not require special treatment. We observe that we can entertain and grant a waiver request if a local exchange carrier that does not satisfy our rural telephone company definition can meet our waiver standard set forth in Section 24.819 of the Commission's Rules to warrant qualifying the LEC for a partitioned broadband PCS license. *See* 47 CFR § 24.819.

108. We continue to believe that our existing rules, which allow rural telephone companies to obtain broadband PCS licenses that are geographically partitioned from larger PCS service areas, will provide a viable opportunity for these entities to successfully acquire PCS licenses and offer service to rural areas. We are confident that the partitioning system articulated in the *Fifth Report and Order* satisfies the directive of Congress to ensure that rural telephone companies have the opportunity to provide PCS services to all areas of the country, including rural areas. In addition, we believe that the other benefits afforded to designated entities, combined with the cellular attribution threshold for rural telephone companies adopted in Gen. Docket No. 90–314, will further ensure that rural areas have expedient access to PCS services.

109. We disagree with MEANS/SDN's contention that modifications to our consortia provisions are needed to fulfill Congress' mandate that rural telephone companies have an opportunity to acquire PCS licenses. As we noted in the *Fifth Report and Order*, we expect that virtually all rural telephone company consortia will be eligible to bid on licenses in Blocks C and F without competition from "deep pocket" bidders. Additionally, if consortia members qualify as small

businesses, the Commission will provide the bidding credit and installment payment provisions extended to similarly-situated applicants. Accordingly, we believe it is unnecessary to permit passive equity investments in rural telephone company consortia, as MEANS/SDN requests. Indeed we do not extend similar benefits to small, non-rural telephone businesses that form bidding consortia.

110. We also reject TEC's and MEANS/SDN's proposal to extend bidding credits to rural telephone companies even if they are not small businesses or owned by minorities and/or women. We continue to believe that existing benefits for rural telephone companies will allow them to effectively compete for licenses that serve rural territories. In addition to the partitioning and consortia provisions, we also note that rural telephone companies qualify for significant financial benefits from the Rural Electrification Administration and the Universal Service Fund, which as BET suggests, adequately compensates these entities for the lack of bidding credits. Additionally, we note that our bidding credits were specifically tailored to address the discriminatory market barriers faced by women and minority-owned entities. We concur with BET's assessment that rural telephone companies do not face the same kinds of barriers raising capital.

111. We note that most, if not all, rural telephone companies meet the entrepreneurs' block size standards and are permitted to bid directly on entrepreneurs' blocks licenses. To the extent that a rural telephone company does not qualify for the entrepreneurs' blocks, however, we disagree that it will be forced to negotiate with other licensees that may not be willing to sell their broadband PCS interests in the from of partitioned licenses or other ownership arrangements. On the contrary, we believe that other applicants and licensees will find rural telephone companies attractive entities to negotiate with, because of the efficiencies associated with rural telephone companies existing infrastructure. Additionally, since a licensee will be permitted to assign a portion of its license to a rural telephone company without violating the transfer and holding requirements, we expect that licensees will actively solicit participation by rural telephone companies. For the reasons discussed above, we continue to believe that our existing scheme, which is narrowly tailored to satisfy Congress' mandate, will provide rural telephone companies with a meaningful opportunity to participate in the provision of broadband PCS services and further the objective of rapidly getting service to rural areas.

112. Finally, we dismiss concerns raised by TEC and Hicks and Ragland concerning the permissible size of a rural telephone company's service area. We addressed these concerns in the *Fifth Report and Order* and concluded that a partitioned area containing no more than twice the population of that portion of a rural telephone company's wireline service area provides a reasonable presumption of a permissible service territory. However, we agree that rural telephone companies will require some flexibility in fashioning a partitioned service area and thereby affirm our prior conclusion that a strict rule is not needed.

Aggregation of and Holding Period for the Entrepreneurs' Block Licenses

Single Entity Purchase Limit

113. To ensure that C and F block licenses are disseminated among a wide variety of applicants, our rules as adopted in the *Fifth Report and Order*, restrict the number of licenses within the entrepreneurs' block that a single entity may win at auction. Specifically, we impose a limitation that no single entity may win more than 10 percent of the licenses available in the entrepreneurs' blocks, or 98 licenses. We indicated that the 98 licenses may all be in frequency block C or all in frequency block F, or in some combination of the two blocks. We observed that such a limit would ensure that at least 10 winning bidders enjoy the benefits of the entrepreneurs' blocks, while also allowing bidders to effectuate aggregation strategies that include large numbers of licenses and extensive geographic coverage. We provided that the limit would apply only to the total number of licenses that may be won at auction on the C and F blocks. Furthermore, we indicated that for purposes of this restriction we will consider licenses to be won by the same entity if an applicant (or other entity) that controls, or has the power to control licenses won at the auction, controls or has the power to control another license at the auction.

114. On reconsideration, the Small Business PCS Association (SBPCS) recommends that the maximum number of entrepreneurs' block licenses purchased by a single entity be limited to licenses that cover no more than a total of 10 percent of the national population, or approximately 25 million "pops." SBPCS expresses concern that the existing limit does not provide for enough diversity of ownership since it would allow a single entity to acquire the top 98 BTA licenses on the 30 MHz entrepreneurs' blocks.

115. After considering SBPCS' concerns, we will retain the existing limit, which prevents any single entity from acquiring more than 10 percent of the entrepreneurs' block licenses. We believe that changing the limit to 10 percent of the population or 25 million "pops" rule would be overly restrictive. We note, for example, that successful entrepreneurs will need to form coherent regional "cluster" strategies to compete against large communications companies, such as dominant cellular providers, and that such regional clusters may come together into a national alliance with common technology and marketing strategies, including a common brand name. A 25 million "pops" per entity limit would severely restrict entrepreneurs that win the New York BTA (with 18 million "pops") and the Los Angeles BTA (with 15 million "pops") from any meaningful regional cluster strategy, given the size of adjoining markets. In light of this concern, we want to be careful not to impose a restriction that would unfairly disadvantage C and F block new entrants in the new PCS marketplace. We are satisfied that the present limit achieves the proper balance between promoting fair distribution of benefits and ensuring that entrepreneur block winners have enough flexibility to develop competitive systems on a regional and nationwide basis.

Restrictions on Transfer or Assignment

116. In the *Fifth Report and Order*, restrictions on the transfer or assignment of licenses were adopted to ensure that designated entities do not take advantage of special entrepreneurs' block provisions by immediately assigning or transferring control of their licenses to non-designated entities. We indicated that the "trafficking" of licenses in this manner would unjustly enrich the auction winners and would undermine the congressional objective of giving designated entities the opportunity to provide spectrum-based services. Thus, our rules prohibit licensees in the entrepreneurs' blocks from voluntarily assigning or transferring control of their licenses during the three years after the date of the license grant.[61] For the subsequent

[61] *See* 47 CFR 24.839(d). We indicated that we would consider exceptions to the three-year holding period on a case-by-case basis in the event of a judicial order decreeing bankruptcy or a judicial foreclosure if the licensee proposes to assign or transfer its authorization to an entity that meets the

Continued

two years (or the fourth and fifth years of the term), the licensee is permitted to assign or transfer control of its authorization only to an entity that satisfies the entrepreneurs' blocks entry criteria.

117. We also provided that during the five-year period licensees cannot assign an attributable interest in the license that would cause them to exceed the financial eligibility requirements.[62] Additionally, we stated that a transferee or assignee who receives a C or F block license during the five-year holding period will remain subject to the transfer restrictions for the balance of the holding period. Thus, if a C-block authorization is assigned to an eligible business in year four of the license term, it will be required to hold that license until the original five-year period expires, subject to the same exceptions that applied to the original licensee. Moreover, we stated that we will conduct random pre- and post-auction audits to ensure that applicants receiving preferences are in compliance with the Commission's rules.[63]

118. In the *Fifth Report and Order*, we also adopted rules to prevent entrepreneur block license holders from realizing any unjust enrichment that is gained through a transfer or assignment that occurs during the original license term.[64] Specifically, we provided that if, within the original license term, a licensee applies to assign or transfer control of a license to an entity that is not eligible for as high a level of bidding credit, then the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, must be paid to the U.S. Treasury as a condition of approval of the transfer or assignment.[65]

119. We adopted similar requirements with respect to repayment of installment payments. Specifically, if a licensee that was awarded installment payments seeks to assign or transfer control of its license during the term of a license to an entity not meeting the applicable eligibility standards, we require payment of the remaining principal and any interest accrued through the date of assignment as a condition of approval of the transfer or assignment. Accordingly, we explained that if an entity seeks to assign or transfer control of a license to an entity that does not quality for as favorable an installment payment plan, the installment payment plan, if any, for which the acquiring entity qualifies will become effective immediately upon transfer or assignment of the license. Thus, a higher interest rate and earlier payment of principal may begin to be applied.[66]

120. Two petitioners discussed the holding period and limited transfer restrictions imposed on entrepreneurs' block licenses. Specifically, AIDE requests the Commission repeal the five-year holding period, contending that the unjust enrichment provisions (to the extent they promote recovery of bidding credits and installment payments) eliminate the need for such a restriction. AIDE also argues that once a designated entity receives a spectrum-based license, the mandate of Congress to provide these entities with a fair opportunity to provide spectrum-based services is satisfied, and that there is no justification for any further restrictions beyond that point in time. AIDE also wants clarification of how our unjust enrichment provisions will apply if a transfer or assignment does occur during the five-year holding period.

121. Additionally, CTIA requests that the Commission amend its transfer restrictions to allow all PCS licensees (including entrepreneurs' blocks and designated entities) to transfer 5 MHz of spectrum immediately after license grant. Alternatively, CTIA asks that transfer be permitted within one year after service is initiated by a new PCS entrant in the relevant PCS service area. CTIA contends that this change is needed to provide cellular carriers with reasonable flexibility to reach the 40 MHz PCS spectrum cap (especially in secondary market transactions), and may increase the value of spectrum at auction (*i.e.*, by providing designated entities with an added source of funding and ensuring that market forces place the spectrum in the hands of those who value it most highly).

122. We will not modify our five-year holding period and limit transfer restrictions. While AIDE and CTIA ask us to eliminate or significantly relax our restrictions, many commenters generally support the idea of a holding and limited transfer period for entrepreneurs' block licenses. BET, for example, contends that without a holding requirement, the opportunities for circumventing the Commission's rules are increased as non-designated entities weigh the benefits of sacrificing certain preferences (*e.g.*, bidding credits) in exchange for control of a valuable PCS license. Contrary to AIDE's point of view, we believe that unjust enrichment provisions alone do not provide adequate safeguards for ensuring that designated entities retain *de jure* and *de facto* control over their licenses. We are satisfied that the five-year holding period and limited transfer restrictions adopted in the *Fifth Report and Order* are justified for our purposes in meeting our congressional mandate.

123. Additionally we reject CTIA's request to permit 5 MHz of spectrum to be transferred after the license grant because it would contradict our determinations in the PCS service rules docket (Gen. Docket 90–314) concerning the disaggregation of broadband PCS spectrum. In that docket, we decided that no disaggregation of spectrum should be allowed until a broadband PCS licensee had met our five-year construction requirements.[67] We also determined that in-region cellular interests should not be permitted to acquire 10 MHz of broadband PCS spectrum until the year 2000—when they would be eligible for an additional 5 MHz of spectrum in their service areas. *See* 47 CFR 24.404. CTIA's proposal would permit disaggregation sooner than is permissible under our PCS service rules, and should be rejected for reasons that we have previously established.

124. In addition, we wish to clarify the application of our holding rule to our financial caps. As we have stated, under certain circumstances we will allow licensees to retain their eligibility during the holding period, even if the company has grown beyond our size limitations for the entrepreneurs' block and for small business eligibility. Thus, we will permit entrepreneurs' block licensees to transfer their licenses in years four through five to other entrepreneurs' block licensees even if it would result in growth beyond the permissible gross assets and total revenues caps, as long as it otherwise complies with our control group and equity requirements. We believe this encourages designated entities to grow, instead of penalizing them for their

financial thresholds for bidding in the entrepreneurs' blocks. *See Fifth Report and Order*, FCC 94–178 at ¶ 128 n. 101.

[62] *See* 47 CFR 24.709(a)(3).

[63] *See* 47 CFR 24.709(d).

[64] While we indicated that the five-year holding and limited transfer requirements in the entrepreneurs' blocks limit the applicability of unjust enrichment provisions generally during the first five-years of the license term (*i.e.*, in cases where the license-holder has engaged in a permissible transfer or assignment where the buyer is eligible for comparable bidding credits or is qualified for installment payments), we indicated that such provisions were still useful, particularly since they are applicable for the full ten-year license term. *See Fifth Report and Order*, FCC 94–178 at ¶ 141 n. 119.

[65] *See* 47 CFR 24.712(d).

[66] *See* 47 CFR 24.711(s).

[67] *See Broadband PCS Reconsideration Order*, FCC 94–144 at ¶¶ 69–70, *further recon. Third Memorandum Opinion and Order* in Gen. Docket 90–314, FCC 94–265 (released Oct. 19, 1994).

success, which was a concern expressed by some commenters.

125. Further, we clarify that between years four and five we will allow licensees to transfer a license to any entity that either holds other entrepreneurs' block licenses (and thus at the time of auction satisfied the entrepreneurs' block criteria) or that satisfies the criteria at the time of transfer. Unjust enrichment penalties apply if these requirements are not met, or if they qualified for different provisions at the time of licensing. For purposes of determining size eligibility for transfers or assignments that occur between the fourth and fifth years, we will use the most recently available audited financial statements in cases where the entity to whom the license is being transferred did not win a license in the original entrepreneurs' block auction.

126. AIDE sought clarification concerning the application of our unjust enrichment provisions to our holding period and limited transfer rules. In response to their request, we reiterate that if a designated entity transfers or assigns its license before year five to a company that qualifies for no bidding credit, then such a sale will entail full payment of the bidding credit as a condition of transfer. If, however, the same transaction occurs (during the same time frame), but the buyer is eligible for a lesser bidding credit, then the difference between the bidding credit obtained by the seller and the bidding credit for which the buyer would qualify, must be paid to the U.S. Treasury for the transaction to be approved by the FCC. With respect to installment payments, we confirm that we expect that when the purchaser is not to an entity that qualifies for any installment payment plan, we will require payment of the unpaid balance in full before the sale will be approved.

Miscellaneous

Audits

127. In the *Fifth Report and Order*, we expressed our intention to conduct random pre- and post-auction audits to ensure that designated entities retain *de facto* and *de jure* control of their facilities and licenses and to ensure that all applicants receiving preferences are in compliance with the eligibility requirements. On reconsideration, we clarify on our own motion that the Commission's use of the term "random" in the *Fifth Report and Order* was generic and that the Commission does not intend to limit itself to conducting "random" audits. While random selection for audit may be one, acceptable enforcement technique in some cases, it may not be the most efficient. We expect that audits might also be undertaken on information received from third parties or on the basis of other factors.[68] Since the audit process will involve the application of in-house and contract resources, we intend to pursue a course of audits that will be efficient as well as effective. Consequently, we are amending the rules to more fully reflect the variety of circumstances that might lead to an audit. We will also add an audit consent to the FCC short-form and other forms where eligibility must be established. Because the Commission's audit program will cover all auction applications, regardless of the service involved, we will promulgate conforming amendments to Subpart Q in Part 1 of the Commission's regulations in a separate order.

128. Audits and other enforcement vehicles are a necessary adjunct to a self-certification process to implement the measures to assist designated entities adopted pursuant to Section 309(j) of the Communications Act. To facilitate our audit program and to provide preliminary assurances that those applicants claiming eligibility for such preferences are in compliance with the regulatory requirements concerning ownership and financial status, we will require that applicants list their control group members, affiliates, attributable investors, gross revenues, total assets and other basic ownership and eligibility information in an exhibit to their short-form applications. Additional, more detailed information concerning eligibility will be required of winning bidders. All applicants are required to maintain an updated file of documentary evidence supporting the information and the status claimed. Applicants that do not win the licenses for which they applied, shall maintain such records until final grant of the license(s) in question, or one year from the date of the filing of their short-form applications, whichever is earlier. Licensees shall maintain such records for the term of the license.

[68] While we anticipate that public scrutiny of entrepreneurs' block applications and the petition to deny process, together with audits, will assist the Commission in uncovering potentially unqualified applicants for the entrepreneurs' blocks, we will in no way condone the filing of frivolous complaints or petitions. We will take appropriate action against those who abuse our processes. We also emphasize that the initiation of an investigation by the Commission (whether pursuant to a complaint or on our own initiative) will not result in the suspension of construction or operation of a licensee's facilities pending the outcome of such investigation.

Defaults

129. Parties have asked questions about how the Commission would resolve issues associated with an entrepreneurs' block licensee becoming financially insolvent. In particular, there is concern about the status of the license when the licensee cannot make the required installment payments, and in the case of when a licensee enters bankruptcy.

130. In the *Second Report and Order*, we clarified that "a designated entity that has defaulted or that anticipated default under an installment payment program" may request a three to six month grace period before the Commission cancels its license.[69]

> "During this grace period, a defaulting licensee could maintain its construction efforts and/or operations while seeking funds to continue payments or seek from the Commission a restructured plan. We will evaluate requests for a grace period on a case-by-case basis * * * deciding whether to grant such requests or to pursue other measures, we may consider, for example, the licensee's payment history, including whether it has defaulted before and how far into the license term the default occurs, the reasons for default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under a distress sale policy. Following a grace period without successful resumption of payment or upon denial of a grace period request, we will declare the license cancelled and take appropriate measures under the Commission's debt collection rules and procedures.[70]

131. Since several commenters requested clarification as to what the Commission would allow in the event a licensee defaults on payment of its installment monies, we clarify that lenders and entrepreneurs' block licensees are free to agree contractually to their own terms regarding situations where the licensee has defaulted under the Commission's installment payment program, and possibly other obligations. As long as there is no transfer of control, we would not become involved in the particulars of a voluntary workout arrangement between a designated entity and a third-party lender.

132. Specifically, an entrepreneurs' block licensee and its lenders may agree that, in the event the licensee defaults on its installment payments, the lenders to that licensee will cure this default by assuming the designated entity's payments to the government. Barring any transfer of control, we would not object to such an arrangement.

[69] *See Second Report and Order*, FCC 94–61 at ¶ 240.

[70] *Id.*

133. In the event a transfer of control is sought under the terms of the workout, the licensee and its lenders must apply for Commission approval of the transfer, in accordance with Section 310(d) of the Communications Act. In a situation where the lender itself is the proposed buyer or transferee, we would scrutinize such an application to determine whether, by virtue of the loan agreement, an earlier transfer of control was effectuated. We clarify that we would also expect that any requirements that arise by virtue of a licensee's status as an entrepreneur or as a designated entity would be satisfied with respect to such a sale. Thus, for example, the transfer would need to be to another qualified entrepreneur if it is to occur within our five-year holding period.

134. In the event an entrepreneurs' block licensee becomes subject to bankruptcy, our existing rules and precedent clarify how the Commission would dispose of a license in such a circumstance. Specifically, transfer to a bankruptcy trustee is viewed as an involuntary transfer or assignment to another party under Section 24.839 of the Commission's Rules.[71] In such a case therefore, there would be a *pro forma* involuntary assignment of the license to a court-appointed trustee in bankruptcy, or to the licensee, as a debtor-in-possession. Assuming the bankrupt estate is liquidated or the trustee finds a qualified purchaser for the licensee's system, and assuming payments to the Commission are maintained or a grace period granted, we will continue generally to defer to federal bankruptcy laws on many matters.[72] We would, however, ultimately have to approve any final transfer of the license. As stated above, we would expect that any requirements that arise by virtue of a licensee's status as an entrepreneur or as a designated entity would be satisfied with respect to such a sale. Thus, for example, the transfer would need to be to another qualified entrepreneur if it is to occur within our five-year holding period.

Final Regulatory Flexibility Analysis

135. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, the Commission's final analysis for the *Fifth Memorandum Opinion and Order* is as follows:

Need for, and Purpose of, this Action. As a result of new statutory, authority, the Commission may utilize competitive bidding mechanisms in the granting of certain initial licenses. The Commission published an Initial Regulatory Flexibility Analysis, *see generally* 5 U.S.C. 603, in the *Notice of Proposed Rule Making* in this proceeding and published Final Regulatory Flexibility Analyses in the *Second Report and Order* (at ¶¶ 299–302) and the *Fifth Report and Order* (at ¶¶ 219–222). As noted in these previous final analyses, this proceeding will establish a system of competitive bidding for choosing among certain applications for initial licenses, and will carry out statutory mandates that certain designated entities, including small entities, be afforded an opportunity to participate in the competitive bidding process and in the provision of spectrum-based services.

136. *Summary of the Issues Raised by the Public Comments.* No commenters responded specifically to the issues raised by the *Fifth Report and Order.* We have made some modifications to the proposed requirements as appropriate.

137. *Significant Alternatives Considered and Rejected.* All significant alternatives have been addressed in the *Fifth Report and Order* and in this *Memorandum Opinion and Order.*

Ordering Clauses

138. Accordingly, it is ordered that the Petitions for Reconsideration and/or Clarification of the *Fifth Report and Order* in this proceeding are granted to the extent described above and denied in all other respects.

139. It is further ordered that the Petition for Rulemaking filed by David J. Lieto on September 21, 1994 is hereby dismissed.

140. It is further ordered that the Petitions for Reconsideration of the *Order on Reconsideration* in this proceeding are granted to the extent described above and denied in all other respects.

141. It is further ordered that these rule changes made herein will become effective sixty days after publication in the **Federal Register.** This action is taken pursuant to Sections 4(i), 303(r) an 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j).

142. It is further ordered that the appropriate Bureau, in consultation with the Managing Director, is delegated authority to revise FCC Forms 175, 401 (and any successor forms) and to modify and create any additional forms to ensure that PCS applicants are in compliance with the requirements set forth in Part 24 of the Commission's Rules, as amended.

List of Subjects in 47 CFR Part 24

Personal communications services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 24 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332, unless otherwise noted.

2. Section 24.709 is revised to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

(a) *General Rule.*

(1) No application is acceptable for filing and no license shall be granted for frequency block C or frequency block F, unless the applicant, together with its *affiliates* and persons or entities that hold interests in the applicant and their *affiliates,* have *gross revenues* of less than $125 million in each of the last two years and *total assets* of less than $500 million at the time the applicant's short-form application (Form 175) is filed.

(2) The *gross revenues* and *total assets* of the applicant (or licensee), and its *affiliates,* and (except as provided in paragraph (b) of this section) of persons or entities that hold interests in the applicant (or licensee), and their *affiliates,* shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency block C or frequency block F under this section.

(3) Any licensee awarded a license pursuant to this section (or pursuant to § 24.839(d)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased *gross revenues* or increased *total assets* due to *nonattributable equity* investments (*i.e.,* from sources whose *gross revenues,* and *total assets* are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered.

(b) *Exceptions to General Rule.*

(1) *Small Business Consortia.* Where an applicant (or licensee) is a *consortium of small businesses,* the

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[71] In the case of an involuntary transfer, FCC Form 490 shall be filed within thirty days following the event that gives rise to the transfer. *See* 47 CFR 24.839.

[72] *See LaRose v. FCC,* 494 F.2d 1145 (D.C. Cir. 1974). *See also* Section 47 CFR 24.839(d)(4).

gross revenues and *total assets* of each small business shall not be aggregated.

(2) *Publicly-Traded Corporations.* Where an applicant (or licensee) is a *publicly traded corporation with widely dispersed voting power,* the *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates,* shall not be considered.

(3) *25 Percent Equity Exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates,* shall not be considered so long as:

(i) Such person or entity, together with its *affiliates,* holds only *nonattributable equity* equaling no more than 25 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(5) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group;* and

(iii) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(5) of this section, and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(4) *49.9 Percent Equity Exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates,* shall not be considered so long as:

(i) Such person or entity, together with its *affiliates,* holds only *nonattributable equity* equaling no more than 49.9 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(6) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group;* and

(iii) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(6) of this section and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(5) *Control Group Minimum 25 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(3) of this section, and applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity,* as provided in paragraph (b)(5)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 25 percent of the applicant's (or licensee's) total equity as follows:

(A) At least 15 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors,* either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying investors* must have both *de jure* and *de facto* control of the applicant;

(C) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned by any of the following:

(*1*) Such *qualifying investors,* either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(5)(i)(A) of this section;

(*2*) *Institutional investors,* either unconditionally or in the form of stock options;

(*3*) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group,* either unconditionally or in the form of stock options; or

(*4*) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options.

(D) Following termination of the three-year period specified in paragraph (b)(5)(i) of this section, *qualifying investors* must continue to own at least 10 percent of the applicant's (or licensee's) total equity, either unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(5)(i)(A) of this section. The restrictions specified in paragraph (b)(5)(i)(C)(*1*) through (*4*) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity,* the 25 percent minimum equity requirements set forth in paragraph (b)(5)(i) of this section shall apply, except that only 10 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors* and that the remaining 15 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors* or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 15 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(5)(i) of this section.

(6) *Control Group Minimum 50.1 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(4) of this section, an applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity,* as provided in paragraph (b)(6)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(A) at least 30 percent of the applicant's (or licensee's) total equity must be held by *qualifying minority and/or women investors,* either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying minority and/or women investors,* must have both *du jure* and *de facto* control of the applicant;

(C) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by any of the following:

(*1*) Such *qualifying minority and/or women investors,* either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(6)(i)(A) of this section;

(*2*) *Institutional investors,* either unconditionally or in the form of stock options;

(*3*) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group,* either unconditionally or in the form of stock options; or

(4) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options.

(D) Following termination of the three-year period specified in paragraph (b)(6)(i) of this section, *qualifying minority and/or women investors* must continue to own at least 20 percent of the applicant's (or licensee's) total

equity, either unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(6)(i)(A) of this section. The restrictions specified in paragraph (b)(6)(i)(C)(*1*) through (*4*) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose *control group*'s sole member is a *preexisting entity*, the 50.1 percent minimum equity requirements set forth in paragraph (b)(6)(i) of this section shall apply, except that only 20 percent of the applicant's (or licensee's) total equity must be held by *qualifying minority and/or women investors*, and that the remaining 30.1 percent of the applicant's (or licensee's) total equity may be held by *qualifying minority and/or women investors*, or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 30.1 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(6)(i) of this section.

(7) *Calculation of Certain Interests.* Except as provided in paragraphs (b)(5) and (b)(6) of this section, ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so, in order to comply with the *nonattributable equity* requirements in paragraphs (b)(3)(i) and (b)(4)(i) of this section.

(8) *Aggregation of Affiliate Interests.* Persons or entities that hold interest in an applicant (or licensee) that are *affiliates* of each other or have an identify of interests identified in § 24.720(1)(3) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the *nonattributable equity* requirements in paragraphs (b)(3)(i) and (b)(4)(i) of this section.

Example 1 for paragraph (b)(8). ABC Corp. is owned by individuals, A, B, and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A & B invest in DE Corp., a broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B are to be treated as one person.

Example 2 for paragraph (b)(8). ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be aggregated because ABC Corp. and BC Corp. are affiliates of each other.

(c) *Short-Form and Long-Form Applications: Certifications and Disclosure.*

(1) *Short-form Application.* In addition to certifications and disclosures required by Part 1, subpart Q of this Chapter and § 24.813, each applicant for a license for frequency Block C or frequency Block F shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and § 24.720, and shall append the following information as an exhibit to its Form 175:

(i) For an applicant that is a *publicly traded corporation with widely disbursed voting power:*

(A) A certified statement that such applicant complies with the requirements of the definition of *publicly traded corporation with widely disbursed voting power* set forth in § 24.720(m);

(B) The identify of each *affiliate* of the applicant if not disclosed pursuant to § 24.813; and

(C) The applicant's *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section.

(ii) For all other applicants:

(A) The identity of each member of the applicant's *control group*, regardless of the size of each member's total interest in the applicant, and the percentage and type of interest held;

(B) The citizenship and the gender or minority group classification for each member of the applicant's *control group* if the applicant is claiming status as a *business owned by members of minority groups and/or women;*

(C) The status of each *control group* member that is *an institutional investor*, an *existing investor*, and/or a member of the applicant's management;

(D) The identify of each *affiliate* of the applicant and each *affiliate* of individuals or entities identified pursuant to paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(C) of this section if not disclosed pursuant to § 24.813;

(E) A certification that the applicant's sole *control group* member is a *preexisting entity*, if the applicant makes the election in either paragraph (b)(5)(ii) or (b)(6)(ii) of this section; and

(F) The applicant's *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section.

(iii) for each applicant claiming status as a *small business consortium*, the information specified in paragraph (c)(1)(ii) of this section, for each member of such consortium

(2) *Long-form Application.* In addition to the requirements in subpart I of this part and other applicable rules (*e.g.*, § 24.204(f), 20.6(e), 20.9(b)), each applicant submitting a long-form application for license(s) for frequency blocks C and F shall, in an exhibit to its long-form application:

(i) Disclose separately and in the aggregate the *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section, for each of the following: the applicant; the applicant's *affiliates*, the applicant's *control group* members; the applicant's attributable investors; and *affiliates* of its attributable investors;

(ii) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for frequency Block C or frequency Block F and its eligibility under §§ 24.711 through 24.270, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(iii) List and summarize any investor protection agreements and identify specifically any such provisions in those agreements identified pursuant to paragraph (c)(2)(ii) of this section, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(3) *Records Maintenance.* All applicants, including those that are winning bidders, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including those documents referenced in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section and any other documents necessary to establish eligibility under this section or under the definitions of *small business and/or business owned by members of minority*

groups and/or women. Licensees (and their successors in interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (Form 175), whichever is earlier.

(d) *Audits.*

(1) Applicants and licensees claiming eligibility under this section or §§ 24.711 through 24.720 shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed broadband PCS service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(e) *Definitions.* The terms *affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, existing investor, gross revenues, institutional investor, members of minority groups, nonattributable equity, preexisting entity, publicly traded corporation with widely dispersed voting power, qualifying investor, qualifying minority and/or woman investor, small business and total assets* used in this section are defined in § 24.720.

3. Section 24.711 is revised to read as follows:

§ 27.711 Upfront payments, down payments and installment payments for licenses for frequency Blocks C and F.

(a) *Upfront Payments and Down Payments.*

(1) Each eligible bidder for licenses on frequency Blocks C or F subject to auction shall pay an upfront payment of $0.015 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid pursuant to § 1.2106 of this Chapter and procedures specified by Public Notice.

(2) Each winning bidder shall make a down payment equal to ten percent of its winning bid (less applicable bidding credits); a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to five percent of its net winning bid within five business days after the auction closes, and the remainder of the down payment (five percent) shall be paid within five business days after the application required by § 24.809(b) is granted.

(b) *Installment Payments.* Each eligible licensee of frequency Block C or F may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.2110(e) of this Chapter and under the following terms:

(1) For an eligible licensee with gross revenues exceeding $75 million (calculated in accordance with § 24.709(a)(2) and (b)) in each of the two preceding years, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license, beginning one year after the date of the initial license grant.

(2) For an eligible licensee with *gross revenues* not exceeding $75 million (calculated in accordance with § 24.709(a)(2) and (b)) in each of the two preceding years or an eligible licensee in a BTA market other than the fifty largest markets, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term.

(3) For an eligible licensee that qualifies as a *Small business* or as a *consortium of small businesses*, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

(4) For an eligible licensee that qualifies as a *business owned by members of minority groups and/or women*, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first three years and payments of interest and principal amortized over the remaining seven years of the license term.

(5) For an eligible licensee that qualifies as a *small business owned by members of minority groups and/or women or as a consortium of small business owned by members of minority groups and/or women*, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first six years and payments of interest and principal amortized over the remaining four years of the license term.

(c) *Unjust Enrichment.*

(1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval. A licensee's (or other attributable entity's) increased *gross revenues* or increased *total assets* due to *nonattributable equity* investments (*i.e.*, from sources whose *gross revenues* and *total assets* are not considered under § 24.709(b)), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered to result in the licensee losing eligibility for installment payments.

(3) If a licensee seeks to make any change in ownership that would result in the licensee qualifying for a less favorable installment plan under this section, the licensee shall seek Commission approval and must adjust its payment plan to reflect its new eligibility status. A licensee may not switch its payment plan to a more favorable plan.

1. Section 24.712 is amended by revising paragraph (d) to read as follows:

§ 24.712 Bidding credits for licenses for frequency Blocks C and F.

* * * * *

(d) *Unjust Enrichment.*

(1) If, before termination of the five-year period following the date of the

initial license grant, a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no longer qualifying for bidding credits under this section, the licensee must seek Commission approval and reimburse the government for the amount of the bidding credit as a condition of the approval of such assignment, transfer or other ownership change.

(2) If, before termination of the five-year period following the date of the initial license grant, a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity meeting the eligibility standards for lower bidding credits or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

2. Section 24.720 is revised to read as follows:

§ 24.720 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 24.709 through 24.714, unless otherwise specified in those sections.

(b) *Small Business: Consortium of Small Businesses.*

(1) A *small business* is an entity that, together with its *affiliates* and persons or entities that hold interest in such entity and their affiliates, has average annual *gross revenues* that are not more than $40 million for the preceding three years.

(2) For purposes of determining whether an entity meets the $40 million average annual *gross revenues* size standard set forth in paragraph (b)(1) of this section, the *gross revenues* of the entity, its *affiliates*, persons or entities holding interests in the entity and their *affiliates* shall be considered on a cumulative basis and aggregated, subject to the exceptions set forth § 24.709(b).

(3) A *small business consortium* is conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business in paragraphs (b)(1) and (b)(2) of this section.

(c) *Business Owned by Members of Minority Groups and/or Women.* A *business owned by members of minority groups and/or women* is an entity:

(1) In which the *qualifying investor* members of an applicant's *control group* are members of minority groups and/or women who are United States citizens; and

(2) That complies with the requirements of § 24.709 (b)(3) and (b)(5) or § 24.709 (b)(4) and (b)(6).

(d) *Small Business Owned by Members of Minority Groups and/or Women: Consortium of Small Businesses Owned by Members of Minority and/or Women.* A *Small business owned by members of minority groups and/or women* is an entity that meets the definitions in both paragraphs (b) ad (c) of this section. A *consortium of small businesses owned by members of minority groups and/or women* is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definitions in paragraphs (b) and (c) of this section.

(e) *Rural Telephone Company.* A *rural telephone company* is a local exchange carrier having 100,000 or fewer access lines, including all *affiliates.*

(f) *Gross Revenues. Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.* cost of goods sold), as evidenced by audited financial statements for the relevant number of calendar years preceding January 1, 1994, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after June 30, 1995, gross revenues shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(g) *Total assets. Total assets* shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements.

(h) *Institutional Investor.* An *institutional investor* is an insurance company, a bank holding stock in trust accounts through its trust department, or an investment company as defined in 15 U.S.C. 80a–3(a), without reference to, or incorporation of, the exemptions set forth in 15 U.S.C. 80a–3(b) and (c); provided that, if such investment company is owned, in whole or in part, by other entities, such investment company, such other entities and the *affiliates* of such other entities, taken as a whole, must be primarily engaged in the business of investing, reinvesting or trading in securities or in distributing or providing investment management services for securities.

(i) *Members of Minority Groups. Members of minority groups* includes Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.

(j) *Nonattributable Equity.*

(1) *Nonattributable equity* shall mean:

(i) For corporations, voting stock or non-voting stock that includes no more than twenty-five percent of the total voting equity, including the right to vote such stock through a voting trust or other arrangement;

(ii) For partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(2) For purposes of assessing compliance with the equity limits in § 24.709(b)(3)(i) and (b)(4)(i), where such interests are not held directly in the applicant, the total equity held by a person or entity shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(k) *Control Group.* A *control group* is an entity, or a group of individuals or entities, that possesses *de jure* control and *de facto* control of an applicant or licensee, and as to which the applicant's or licensee's charters, bylaws, agreements and any other relevant documents (and amendments thereto) provide:

(1) That the entity and/or its members own unconditionally at least 50.1 percent of the total voting interests of a corporation;

(2) That the entity and/or its members receive at least 50.1 percent of the annual distribution or any dividends paid on the voting stock of a corporation;

(3) That, in the event of dissolution or liquidation of a corporation, the entity and/or or its members are entitled to receive 100 percent of the value of each share of stock in its possession and a percentage of the retained earnings of

the concern that is equivalent to the amount of equity held in the corporation; and

(4) That, for other types of businesses, the entity and/or its members have the right to receive dividends, profits and regular and liquidating distributions from the business in proportion to the amount of equity held in the business.

Note to paragraph (k): Voting control does not always assure *de facto* control, such as for example, when the voting stock of the control group is widely dispersed (*see e.g.*, § 24.720(1)(2)(iii).

(l) *Affiliate.*

(1) *Basis for Affiliation.* An individual or entity is an *affiliate* of an applicant or of a person holding an attributable interest in an applicant (both referred to herein as "the applicant") if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(iv) Has an "identity of interest" with the applicant.

(2) *Nature of control in determining affiliation.*

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (l)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example for paragraph (l)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

Example for paragraph (l)(3) introductory text. Two shareholders in Corporation Y each have attributable interests in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity in interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

(i) *Spousal Affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship Affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father, or -mother, step-brother, or -sister, step-son, or -daughter, half brother or sister. This presumption may be rebutted by showing that

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (l)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in a PCS application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.*

(i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (l)(5). If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (l)(5). If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in a PCS application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company

A, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (l)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.*

(i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.*

(i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other

(11) *Exclusions from affiliation coverage.*

(i) For purposes of § 24.709(a)(2) and paragraph (b)(2) of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), or entities owned and controlled by such tribes or corporations, are not considered *affiliates* of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of § 24.709 (b)(3) and (b)(5) or § 24.709 (b)(4) and (b)(6), except that *gross revenues* derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of §§ 24.709(a) and paragraph (b) of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such *gross revenues.*

(ii) For purposes of § 24.709(a)(2) and paragraph (b)(2) of this section, an entity controlled by *members of minority groups* is not considered an *affiliate* of an applicant (or licensee) that qualify as a *business owned by members of minority groups and/or women if affiliation* would arise solely from control of such entity by members of the applicant's (or licensee's) control group who are *members of minority groups.* For purposes of this subparagraph, the term minority-controlled entity shall mean, in the case of a corporation, an entity in which 50.1 percent of the voting interests is owned by *members of minority groups* or, in the case of a partnership, all of the general partners are *members of minority groups* or entities controlled by *members of minority groups*; and, in all cases, one in which *members of minority groups* have both *de jure* and *de facto* control of the entity.

(m) *Publicly Traded Corporation with Widely Dispersed Voting Power.* A *publicly traded corporation with widely dispersed voting power* is a business entity organized under the laws of the United States:

(1) Whose shares, debt, or other ownership interests are traded on an organized securities exchange within the United States;

(2) In which no person

(i) Owns more than 15 percent of the equity; or

(ii) Possesses, directly or indirectly, through the ownership of voting securities, by contract or otherwise, the power to control the election of more than 15 percent of the members of the board of directors or other governing body of such publicly traded corporation; and

(3) Over which no person other than the management and members of the board of directors or other governing body of such publicly traded corporation, in their capacities as such, has *de facto* control.

(4) The term *person* shall be defined as in section 13(d) of the Securities and Exchange Act of 1934, as amended (15 U.S.C. 78(m)), and shall also include investors that are commonly controlled under the indicia of control set forth in the definition of *affiliate* in paragraphs (1)(2) through (1) of this section.

(n) *Qualifying Investor; Qualifying Minority and/or Woman Investor.*

(1) A *qualifying investor* is a person who is (or holds an interest in) a member of the applicant's (or licensee's) *control group* whose *gross revenues* and *total assets*, when aggregated with those of all other attributable investors and *affiliates*, do not exceed the *gross revenues* and *total assets* limits specified in § 24.709(a), or, in the case of an applicant (or licensee) that is a *small business*, do not exceed the *gross revenues* limit specified in paragraph (b) of this section.

(2) A *qualifying minority and/or woman investor* is a person who is a *qualifying investor* under paragraph (n)(1), who is (or holds an interest in) a member of the applicant's (or licensee's) *control group* and who is a *member of a minority group* or a woman and a United States citizen.

(3) For purposes of assessing compliance with the minimum equity requirements of § 24.709(b) (5) and (6), where such equity interests are not held directly in the applicant, interests held by *qualifying ivnestors* and *qualifying minority and/or woman investors* shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(o) *Preexisting Entity.* A *preexisting entity* is an entity that was operating and earning revenues for at least two years prior to December 31, 1994.

3. Section 24.839 is amended by revising paragraphs (a) and (d) to read as follows:

§ 24.839 Transfer of control or assignment of license.

(a) *Approval Required.* Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the broadband Personal Communications Service is also subject to §§ 24.711(c), 24.712(d), 24.713(b) (unjust enrichment) and 1.2111(a) of this chapter (reporting requirement).

* * * * *

(d) *Restrictions on Assignments and Transfers of Licenses for Frequency Blocks C and F.* No assignment or transfer of control of a license for frequency Block C or frequency Block F will be granted unless—

(1) The application for assignment or transfer of control is filed after five years from the date of the initial license grant;

(2) The application for assignment or transfer of control is filed after three years from the date of the initial license grant and the proposed assignee or transferee meets the eligibility criteria set forth in § 24.709 at the time the application for assignment or transfer of control is filed, or the proposed

assignee or transferee holds other license(s) for frequency Blocks C and F and, at the time of receipt of such license(s), met the eligibility criteria set forth in § 24.709;

* * * * *

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