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Federal Register

3–8–00 **Wednesday**
Vol. 65 No. 46 **Mar. 8, 2000**
Pages 12061–12426

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV00–993–1 FIR]

Dried Prunes Produced in California; Changes in Producer District Boundaries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule realigning the boundaries of seven districts established for independent producer representation on the Prune Marketing Committee (Committee) under Marketing Order No. 993. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes grown in California. This rule continues in effect the realignment of the boundaries of the seven independent producer districts. Due to shifts in the production areas, the former production districts for independent producer representation on the Committee were out of balance. The realignment provides for more equitable independent producer representation on the Committee, consistent with current industry demographics.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, CA 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended [7 CFR Part 993], regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect modifications to language in the order's administrative rules and regulations to realign the boundaries of seven districts established for independent producer representation on the Committee. The realignment provides for more equitable independent producer representation on the Committee, consistent with current industry demographics.

Paragraph (a) of § 993.128 of the order's administrative rules and regulations lists and describes the boundaries of each of the seven independent grower districts. This rule continues in effect the provisions of an interim final rule that realigned those boundaries on December 30, 1999 (64 FR 72909, December 29, 1999). To be consistent with current industry demographics, this realignment ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers.

Section 993.24 of the order provides that the Committee shall consist of 22 members, of which 14 represent producers, 7 represent handlers, and 1 represents the public. The 14 producer member positions are apportioned between cooperative producers and independent producers. The apportionment, insofar as is practicable, is the same as the percentage of the total prune tonnage handled by the cooperative and independent handlers during the year preceding the year in which nominations are made is to the total handled by all handlers. In recent years and currently, cooperative producers and independent producers each have been eligible to nominate seven members.

Section 993.28(a) of the order provides that, for independent producers, the Committee shall, with the approval of the Secretary of Agriculture, divide the production area into districts giving, insofar as practicable, equal representation throughout the production area by numbers of independent producers and production of prune tonnage by such producers. When revisions are required, the Committee must make its recommendations to the Secretary of Agriculture to change the district boundaries prior to January 31 of any year in which nominations are to be made. Nominations are made in all even-numbered years.

In recent years, the number of producers and volume of production in most districts has changed, causing imbalances among some districts. Prune orchards were planted to replace other crops which expanded the acreage base to new geographic areas and intensified the prune plantings in other districts. Thus, redistricting was needed to bring the districts in line with order requirements and current California prune industry demographics.

This rule continues in effect the establishment of new district alignments as shown below:

District	Counties in prior district alignment	Counties in new district alignment
1	Colusa, Glenn	Colusa, Glenn, Solano, Yolo.
2	Sutter (Central)	Sutter (North) [1].
3	Sutter (South), Yolo.	Sutter (South) [1].
4	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity..	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.
5	Butte, Sutter (North).	Butte.
6	Yuba	Yuba.
7	Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare all other counties not included in Districts 1, 2, 3, 4, 5, 6.	Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Santa Clara, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, 6.

[1] The north/south boundary of Sutter County will be changed to Franklin Road.

The Committee calculated the percentage of total independent prune growers and the percentage of total independent grower prune tonnage for each new district. The two percentages were averaged for each district to determine a representation factor for each district. The optimal representation factor for each district is 14.29 percent (100 percent divided by 7 districts).

The representation factors for the old and new districts are shown below, based on the 1998–99 crop year (August 1–July 31) data.

District	Representation Factor	
	Old Districts (percent)	New Districts (percent)
1	9.75	15.62
2	11.94	16.87
3	12.5	16.37
4	10.33	10.33
5	23.97	12.35
6	14.43	14.43
7	17.02	13.97

The redistricting allows each district to approximate the optimal representation factor while maintaining a continuous geographic boundary for each district.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, 13 of the 20 handlers (65%) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 1,141 producers (91 percent) of the 1,250 producers could be considered small growers with annual income less than $500,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California dried prunes may be classified as small entities.

This rule continues in effect a realignment of the boundaries of the seven districts established for independent producer representation on the Committee. To be consistent with current industry demographics, this realignment ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers.

Shifts in the prune production area over time have lead to greater differences among the districts than is desirable for equitable independent producer representation. As shown below, prior to the most recent realignment, District 1 represented less than 10% of California's independent prune producers/production while District 5 represented nearly 24% as previously defined. The realignment has provided for more equitable representation.

The representation factors for the old and new districts are shown below, based on the 1998–99 crop year (August 1–July 31) data.

District	Representation Factor [1]	
	Old Districts (percent)	New Districts (percent)
1	9.75	15.62
2	11.94	16.87
3	12.5	16.37
4	10.33	10.33
5	23.97	12.35
6	14.43	14.43
7	17.02	13.97

[1] The optimal representation factor for each district is 14.29 percent (100 percent divided by 7 districts).

The economic vagaries of prune production are responsible for the imbalance among production districts. When the average grower return per ton reached $1,121 in 1993, prune tree sales by nurseries jumped to 1.5 million trees from a normal maintenance and replacement level of about 300,000 trees. Prune orchards were planted to replace other crops which expanded the acreage base to new geographic areas and intensified the prune plantings in others. Non-bearing acreage increased from 8,000 acres in 1993 to 26,000 acres in 1998.

More recently, grower prices have steadily declined from 1993's peak of $1,121 per ton to $763 in 1998. This lead to the removal of over 5,000 acres in 1998 alone. The overall result is a shift in prune production which lead to

an imbalance in the composition of independent producer districts.

The realignment of district boundaries yields more equitable representation. The representation factors for the districts ranged from 9.75% to 23.97%. The revised alignment narrows this range to 10.33% to 16.87%. The California prune industry considered other district alignments; however, none would have improved the balance among districts as much as the realignment implemented. Since the weather-reduced 1998–99 prune crop (102,000 tons) was the smallest since 1986, the Committee also analyzed the representation factor on the more typical 1997–98 crop (205,000 tons) to ensure that the short crop year did not produce atypical results. The results were consistent as far as each district's percent of the total. Another alternative considered was to do nothing. However, this would not have done anything to correct the representation factor imbalance, and this was not acceptable.

The Committee unanimously recommended this change at its November 30, 1999, meeting. Since the redistricting in 1994, the number of producers and volume of production in most districts changed causing imbalances among some districts. Thus, redistricting was needed to bring the districts in line with order requirements and current California prune industry demographics.

This rule continues in effect new district alignments as shown below:

District	Counties in prior district alignment	Counties in new district alignment
1	Colusa, Glenn	Colusa, Glenn, Solano, Yolo
2	Sutter (Central)	Sutter (North) [1]
3	Sutter (South), Yolo.	Sutter (South) [1]
4	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity
5	Butte, Sutter (North).	Butte
6	Yuba	Yuba
7	Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6.	Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Santa Clara, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6

[1] The north/south boundary of Sutter County will be changed to Franklin Road.

At the November 30, 1999, meeting, the Committee discussed the financial impact of this change on handlers and producers. All independent producers regardless of size will continue to have representation and the overall representation will be more equitable as previously explained. There will be no additional costs generated by this rule. Since this rule affects only independent producers, there is no expected impact on handlers.

This rule continues in effect the realignment of the boundaries of seven independent grower districts. This realignment allows each district to approximate the optimal representation factor, while maintaining a continuous geographic boundary for each district.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large entities. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 22 members, of which 7 are handlers, 14 are producers and 1 is a public representative, the majority of whom are small entities.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Ad-Hoc Redistricting Subcommittee met on November 2, 1999, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on December 29, 1999. Copies of the rule were mailed by the Committee's staff to all Committee members and alternates and prune handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 30-day comment period which ended January 28, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's unanimous recommendation and other information, it is found that finalizing the interim final rule, without change, as hereinafter set forth and published in the **Federal Register** (64 FR 72909, December 29, 1999), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and Recordkeeping requirements.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 993 which was published at 64 FR 72909 on December 29, 1999, is adopted as a final rule without change.

Dated: March 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–5610 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 97–108–2]

Brucellosis in Cattle; State and Area Classifications; Arkansas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Arkansas from Class A to Class Free. We have determined that Arkansas meets the standards for Class Free status. The interim rule relieved certain restrictions on the interstate movement of cattle from Arkansas.

EFFECTIVE DATE: The interim rule became effective on December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. R. T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1237; (301) 734–7709.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective December 3, 1997, and published in the **Federal Register** on December 4, 1997 (62 FR 64134–64135, Docket No. 97–108–1), we amended the brucellosis regulations concerning the interstate movement of cattle, contained in § 78.41, by changing the classification of Arkansas from Class A to Class Free. The interim rule relieved certain restrictions on the interstate movement of cattle from Arkansas.

Comments on the interim rule were required to be received on or before February 2, 1998. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 62 FR 64134–64135 on December 4, 1997.

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 2nd day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5597 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

12 CFR Part 1510

RIN 1505–AA79

Resolution Funding Corporation Operations

AGENCY: Department of the Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Secretary of the Treasury (Secretary) is revising the Treasury Department's regulation governing the operations of the Resolution Funding Corporation (Funding Corporation). The Funding Corporation is a mixed-ownership government corporation under the supervision of the Secretary. The operations regulation currently governs matters such as how the Funding Corporation raises capital, issues and services its debt, and pays its administrative expenses. The revisions in the interim final rule implement recent statutory changes affecting these activities. In addition, the revisions eliminate certain provisions in the operations regulation relating to activities the Funding Corporation no longer performs and streamline the remaining provisions.

DATES: The interim final rule is effective on March 8, 2000. Written comments on the interim final rule may be submitted to the Treasury Department on or before April 7, 2000.

ADDRESSES: Mail comments to: Office of the Assistant General Counsel (Banking and Finance), Attention: Comment Record, Room 2026, Department of the Treasury, 1500 Pennsylvania Ave., NW 20220. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make an appointment, call (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Brandon B. Straus, Attorney-Advisor, Office of the Assistant General Counsel (Banking and Finance), (202) 622–1964, or Matthew Green, Financial Analyst, Office of Financial Institutions Policy, Department of the Treasury, (202) 622–2157.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. Statutory Requirements

In 1989, Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). *See* Public Law 101–73, 103 Stat. 183 (1989). One of the purposes of FIRREA was to resolve a large number of insolvent savings associations. In furtherance of this purpose, FIRREA added a new section 21A to the Federal Home Loan Bank Act (Act) creating the Resolution Trust Corporation (RTC), a mixed ownership government corporation charged with containing, managing, and resolving failed savings associations. In order to fund the RTC's activities, FIRREA added a new section 21B to the Act creating the Funding Corporation.

Section 21B(f) of the Act authorizes the Funding Corporation to issue up to $30 billion of debt obligations and to transfer the net proceeds of the debt issuance to the RTC through the purchase of RTC capital certificates. Prior to issuing any obligations, the Funding Corporation is required to establish a Principal Fund to defease the principal amount of the obligations. The Act requires the Federal Home Loan Banks (Banks) and depository institutions whose deposits are insured by the Savings Association Insurance Fund (SAIF members) to capitalize the Principal Fund through the purchase of nonvoting stock of the Funding Corporation. The Principal Fund is to be invested in noninterest bearing direct obligations of the United States having equal maturity value with the principal amount of the Funding Corporation's obligations. Upon the maturity of the Funding Corporation's obligations, the securities in the Principal Fund are to be liquidated to repay the obligations.

Section 21B(f) of the Act directs the Funding Corporation to pay interest on its obligations with funds obtained from up to five sources, which are specified in the statute. The Funding Corporation is to obtain funds from these sources in succession, to the extent that funds from

the previous source or sources are insufficient to cover the entire amount of the interest payment due. As further discussed below, these sources are: (1) Earnings on Funding Corporation assets not invested in the Principal Fund; (2) certain funds of the RTC; (3) a portion of the net earnings of the Banks; (4) funds from the Federal Savings and Loan Insurance Corporation Resolution Fund (FSLIC Resolution Fund) and (5) the Secretary.

The Act also governs matters such as the Funding Corporation's investments, administrative expenses, and management. The Funding Corporation is managed by a three-member Directorate, consisting of the Director of the Office of Finance of the Federal Home Loan Bank System (Office of Finance) and two of the 12 Bank presidents, who serve on a rotating basis. Day-to-day operations of the Funding Corporation are carried out by employees of the Office of Finance.

From 1989 to 1998, the Funding Corporation operated under the supervision of the Thrift Depositor Protection Oversight Board (Board). Congress abolished the Board in 1998 and transferred its oversight authority for the Funding Corporation to the Secretary. *See* Public Law 105–216, section 14, 112 Stat. 909 (1998).

B. Regulatory Requirements

The Board initially issued the operations regulation in 1989 to implement the statutory provisions discussed above. *See* 54 FR 41950 (Oct. 13, 1989) (codified at 12 CFR part 1510). After the Board was abolished in 1998, the Secretary transferred the operations regulation to the Treasury Department. *See* 63 FR 57236 (Oct. 27, 1998). The Secretary did not at that time, however, revise the operations regulation to delete references to the Board or make other changes to update the regulation.

As discussed in detail below in the Analysis of the Interim Final Rule section, this interim final rule revises the operations regulation to reflect the transfer of oversight authority to the Secretary. The interim final rule also updates the regulation to take into account developments affecting the funding of interest payments on Funding Corporation obligations, such as the termination of the RTC in 1995 and changes made by the Gramm-Leach-Bliley Act of 1999 (GLBA), Public Law 106–102 (1999). In the course of making these changes, the Secretary is streamlining the regulation by eliminating provisions that no longer need to be embodied in regulation. The interim final rule also revises the language and the overall structure of the operations regulation to comply with the President's Memorandum of June 1, 1998 requiring the use of plain language in agency regulations.

II. Analysis of the Interim Final Rule

The operations regulation currently contains provisions implementing each of the Funding Corporation's three main statutory functions discussed above: (1) Raising capital for the Principal Fund; (2) issuing debt obligations; and (3) paying interest on the obligations. The operations regulation also implements certain administrative functions such as the payment of the Funding Corporation's administrative expenses and the investment of its surplus funds. As further discussed below, it is no longer necessary to implement the first two statutory functions—capitalization and debt issuance—by regulation. Consequently, the interim final rule eliminates existing provisions of the operations regulation related to these functions. The interim final rule also retains, streamlines, and updates the provisions of the operations regulation that implement the Funding Corporation's third main function—paying interest on its debt—as well as its administrative functions.

A. Elimination of Existing Provisions on Debt Issuance

From 1989 to 1991, the Funding Corporation undertook a series of debt issuances totaling $29,995,180,000, in the form of noncallable bonds with 30- and 40-year maturities. Consequently, of the Funding Corporation's $30 billion debt issuance authority, only $4.82 million remains unused.

The statutory requirements regarding the use of the Funding Corporation's debt issuance proceeds make it highly unlikely that the Funding Corporation will ever use its remaining $4.82 million of issuance authority. Specifically, section 21B(f)(4) of the Act provides that the Funding Corporation must use the proceeds of any debt issuance for one of two purposes: (1) To purchase RTC capital certificates; or (2) to refund previously issued Funding Corporation obligations.

The RTC terminated on December 31, 1995, pursuant to section 21A(m) of the Act. Therefore, the Funding Corporation can no longer transfer funds to the RTC through the purchase of RTC capital certificates. Accordingly, any new debt issuance could not fulfill the first statutory purpose cited above. Furthermore, since the Funding Corporation's outstanding obligations are noncallable, the Funding Corporation is contractually bound not to repay them prior to maturity. Therefore, the Funding Corporation would not issue new obligations for the second statutory purpose.

In sum, the primary purpose of the Funding Corporation's debt issuance function—to raise funds to finance the resolution activities of the RTC—was fulfilled by 1991, and the circumstances under which a new debt issuance would be warranted are remote. Consequently, provisions in the operations regulation at existing § 1510.4, entitled ''Authority to issue obligations'', and existing § 1510.8, entitled ''Issuance expenses'', are no longer necessary and may be removed. The elimination of these regulatory provisions, however, does not affect the Funding Corporation's underlying statutory authority to issue obligations or the Secretary's authority to regulate their issuance. These authorities remain in effect under the Act.

B. Elimination of Existing Provisions on Capitalization of the Principal Fund

The Principal Fund is a segregated custodial account held by the Funding Corporation's fiscal agent, the Federal Reserve Bank of New York. The sole purpose of the Principal Fund is to defease the aggregate principal amount of the debt obligations issued by the Funding Corporation. Under the Act, the Funding Corporation may not issue any new obligations unless there are amounts in the Principal Fund sufficient to defease the principal amount of the new obligations. The Principal Fund currently contains non-marketable zero-coupon Treasury bonds with total face amounts sufficient to defease fully the aggregate principal amount of outstanding Funding Corporation obligations.

As discussed above, the Funding Corporation used all but $4.82 million of its debt issuance authority by 1991. Therefore, since 1991, the Funding Corporation has needed no new capital for the Principal Fund. Furthermore, since it is unlikely that the Funding Corporation will issue any additional obligations, the Secretary is removing provisions in the operations regulation relating to capitalization of the Funding Corporation. These provisions currently appear in § 1510.9, entitled ''Capitalization of Funding Corporation'' and § 1510.10, entitled ''Funding Corporation Principal Fund Reserve Account''.

Existing § 1510.9 generally requires the Funding Corporation to make quarterly projections of the amount of funds necessary to capitalize the Principal Fund and pay interest on outstanding Funding Corporation obligations, as well as projections on

how it will raise those funds from the Banks. Section 1510.9 also contains a procedure for the collection of capital payments from the Banks, SAIF members, and the FSLIC Resolution Fund.

Existing § 1510.10 implements statutory provisions governing the situation where one or more ''deficient'' Banks are unable to provide the Funding Corporation with the amounts required to capitalize the Principal Fund. The Act and the regulation require that the ''remaining'' Banks provide funds on behalf of the ''deficient'' Banks and later receive reimbursement.

The interim final rule removes the provisions in existing § 1510.9 requiring the Funding Corporation to project amounts required to capitalize the Principal Fund and to raise those funds. The interim final rule retains and transfers to a new section the provisions in § 1510.9 requiring the Funding Corporation to make quarterly projections of amounts available to cover interest payments on Funding Corporation obligations. The interim final rule removes in its entirety § 1510.10, regarding the Principal Fund Reserve Account.

As in the case of the Funding Corporation's debt issuance authority, the elimination of regulatory provisions governing capitalization of the Funding Corporation does not affect the Funding Corporation's underlying statutory authority to raise capital or the Secretary's authority to regulate this activity. Moreover, much of existing §§ 1510.9 and 1510.10 merely repeat or cross reference provisions of the Act. Consequently, removal of these regulatory provisions will not deprive the Funding Corporation, the Banks, or the public of interpretive guidance that elaborates on the provisions of the Act.

C. Section-by-Section Analysis of the Interim Final Rule

1. Section 1510.1—Authority, Purpose, and Scope

Section 1510.1 of the interim final rule cites the statutory authority under which the Secretary may issue the operations regulation and explains the purpose and scope of the regulation. Interim § 1510.1(b) makes clear that the operations regulation does not implement all aspects of the Funding Corporation's statutory authority. It states that the purpose of Part 1510 is to provide direction to the Funding Corporation in carrying out its statutory mandate to make interest payments on its obligations and to provide guidance to the Funding Corporation in paying its administrative expenses. Interim § 1510.1 also makes clear that the Secretary may provide any necessary direction to the Funding Corporation in carrying out any of its other statutory authorities.

Interim § 1510.1(c) carries forward the substance of existing § 1510.2, entitled ''General authority''. Existing § 1510.2 generally provides that the Funding Corporation may exercise the authority granted under the Act and its bylaws, whether or not that authority is implemented by regulation, subject to the direction of the Board. Interim § 1510.1(c) similarly makes clear that the absence of specific regulations implementing the Funding Corporation's statutory authority does not diminish the Funding Corporation's ability to exercise that authority in accordance with its bylaws, subject to the oversight of the Secretary.

2. Section 1510.2—Definitions

Section 1510.2 of the interim final rule largely carries forward the definitions in existing § 1510.1 of the operations regulation, with some exceptions. The interim final rule eliminates the definition referring to the now abolished Thrift Deposit Protection Oversight Board. It also eliminates definitions related to the capitalization of the Funding Corporation and the issuance of Funding Corporation obligations, including: ''Deficient bank'', ''Excess amount'', ''Remaining bank'', ''Financing Corporation'', and ''Issuance costs''. Although the term ''Issuance costs'' is defined in the Act to include the ongoing expenses associated with servicing Funding Corporation obligations, the Funding Corporation has prepaid its fiscal agent for these expenses. Therefore, the Funding Corporation currently has no issuance costs and will not incur issuance costs absent a new debt issuance.

The interim final rule revises the definition of ''Administrative expenses'' by deleting a reference to issuance costs, which are no longer incurred, as well as a reference to redemption premiums, which would be incurred only through a refunding of existing obligations.

The interim final rule also revises the definition of the ''Net earnings'' of a Bank by deleting the reference to payments made for the purchase of Funding Corporation capital stock. In addition, the interim final rule deletes the reference to purchases of Financing Corporation stock because the Banks no longer undertake such purchases. The interim final rule adds language regarding deductions for operating expenses and expenses related to the Banks' Affordable Housing Programs, pursuant to section 607 of the GLBA, which clarifies the definition of ''net earnings'' for purposes of determining the amount of each Bank's payment to cover the interest on Funding Corporation obligations.

Interim § 1510.2 adds a definition referring to the Secretary of the Treasury, consistent with transfer of the oversight authority for the Funding Corporation to the Secretary. The interim final rule also adds a definition referring to the Federal Housing Finance Board, which, as discussed further below, now has a statutory role in determining the availability of funds from the Banks for payment of interest on Funding Corporation obligations. In order to simplify the language of the regulation, the interim final rule adds definitions of two new terms: ''obligations'', which refers to Funding Corporation obligations, and ''interest payment due date'', which refers to the date on which the next quarterly interest payments on such obligations are due.

3. Section 1510.3—How Does the Funding Corporation Pay Administrative Expenses?

Section 1510.3 of the interim final rule requires the Funding Corporation to develop an annual budget for its administrative expenses, submit the budget by November 15 to the Secretary for approval, and collect funds from the Banks in order to pay the administrative expenses. Interim § 1510.3 largely carries forward and streamlines the requirements of existing § 1510.6, entitled ''Budget and expenses'', and § 1510.7, entitled ''Billing of administrative expenses''.

The dollar amount of the Funding Corporation's administrative budget has changed little or not at all from year to year. In order to streamline the budget approval process, interim § 1510.3(b) provides that the administrative budget submitted to the Secretary by the Funding Corporation is deemed to be approved by the Secretary unless the Secretary disapproves it within 45 days of the date submitted.

Interim § 1510.3(d) carries forward requirements in existing § 1510.7 that provide for each Bank to pay a portion of the Funding Corporation's administrative expenses, calculated according to the formula set forth in section 21B(c)(7)(B) of the Act. For purposes of increased clarity, the interim final rule replaces the reference to the Act with a description of the formula. It provides that the amount of each Bank's payment must be pro rated according to the percentage of the total

outstanding Funding Corporation capital stock owned by the Bank.

4. Section 1510.4—Who May Act as the Depositary and Fiscal Agent for the Funding Corporation?

Section 1510.4 of the interim final rule carries forward and consolidates the provisions in existing § 1510.5 of the operations regulation, entitled ''Federal Reserve banks to be depositaries and fiscal agents''. Interim § 1510.4(b) adds new language clarifying that the Funding Corporation may use a demand deposit account at a federally insured depository institution only as a means of managing funds used to pay administrative expenses. This change conforms the operations regulation to the Funding Corporation's current practice, as approved by the former Board.

5. Section 1510.5—How Does the Funding Corporation Make Interest Payments on Its Obligations?

The payment of interest on outstanding Funding Corporation obligations is now the Funding Corporation's primary activity. Under section 21B(f) of the Act, the Funding Corporation is to make interest payments with funds obtained from the following sources: (1) Earnings on Funding Corporation assets not invested in the Principal Fund; (2) certain funds of the RTC; (3) a portion of the net earnings of the Banks; (4) any net proceeds from the sale of assets received from the RTC by the FSLIC Resolution Fund; and (5) the Secretary. The Funding Corporation is to tap these sources in succession, to the extent that funds from the previous source or sources are insufficient to cover the entire amount of the interest payment due.

Interest on the Funding Corporation's obligations comes due quarterly. Consequently, the operations regulation sets forth a procedure under which the Funding Corporation makes quarterly projections of the funds available from these sources and then collects the funds on a quarterly basis.

Section 1510.5 of the interim final rule carries forward provisions relating to funding projections in existing § 1510.9(a), entitled ''Capitalization of Funding Corporation''; provisions relating to the payment of interest in existing § 1510.11, entitled ''Interest payments and interest reserve account''; and provisions in existing § 1510.12, entitled ''Request for funds for interest payments''. In addition, interim § 1510.5 adds new provisions to reflect statutory and other changes discussed below.

Section 1510.5(a) of the interim final rule carries forward existing provisions that direct the Funding Corporation to obtain funds for interest payments from sources designated in section 21B(f)(2) of the Act. Interim § 1510.5(a) also reflects two changes from the existing operations regulation.

First, interim § 1510.5(a) removes reference to certain funds of the RTC as a funding source for interest payments (although, as explained below, proceeds from assets once held by the RTC remain available for interest payments). Section 21B(f)(2)(B) of the Act designates the RTC as the second of the five funding sources for interest payments on Funding Corporation obligations. The Act provides that to the extent that amounts from the first funding source—earnings on assets of the Funding Corporation not invested in the Principal Fund—are insufficient to cover interest payments due, the RTC must pay to the Funding Corporation: (i) The liquidating dividends and payments made on claims received by the RTC from receiverships to the extent such proceeds are determined by the Board to be in excess of funds presently necessary for resolution costs; and (ii) any proceeds from warrants and participations acquired by the RTC.

Pursuant to section 21A(m)(2) of the Act, the RTC ceased to exist on December 31, 1995. Upon its termination, all the RTC's assets and liabilities were transferred to the FSLIC Resolution Fund, including the RTC's claims on receiverships as well as any warrants and participations it held. Furthermore, after the RTC terminated, the Board's authority with respect to the RTC terminated. The Board no longer had the authority described in section 21B(f)(2)(B) of the Act to direct the RTC—defunct after 1995—to transfer to the Funding Corporation any liquidating dividends and payments made on receivership claims. Nor did the Board have any authority to direct the FSLIC Resolution Fund to make payments to the Funding Corporation, including payments from assets of the former RTC. Finally, the Board was abolished in 1998, and the Secretary succeeded to the Board's remaining programmatic function: oversight of the Funding Corporation.

In sum, the funds described in section 21B(f)(2)(B) of the Act are no longer held by the RTC and both the RTC and the regulatory agency that would direct RTC to make payments to the Funding Corporation have ceased to exist. For these reasons, section 21B(f)(2)(B) is no longer operative. Therefore, interim § 1510.5(a), which lists the funding sources for interest payments on Funding Corporation obligations, does not make reference to the RTC funds described in section 21B(f)(2)(B).

Nonetheless, the former RTC's assets remain available to fund interest payments on the Funding Corporation's obligations. Section 21B(f)(2)(D) of the Act designates the net proceeds from the sale of these assets—now held by the FSLIC Resolution Fund—as the fourth designated funding source for the Funding Corporation's interest payments. Interim § 1510.5(a)(3) makes reference to this funding source.

Second, interim § 1510.5(a)(2) revises the language describing the amount of the payments the Funding Corporation must obtain from the Banks. Prior to the enactment of the GLBA, the Act required the Banks as a group to pay an aggregate amount of $300,000,000 per year to fund interest on Funding Corporation obligations. This aggregate amount was allocated among the Banks pursuant to a requirement that each Bank pay an equal percentage of its annual net earnings up to 20 percent. If the Banks were required to pay more than 20 percent in a given year to reach the aggregate $300,000,000 payment, the amounts over 20 percent were allocated among the Banks according to a statutory formula.

Section 607 of the GLBA amended the Act by eliminating the $300,000,000 cap on the Banks' annual payment and requiring each Bank to pay the Funding Corporation a fixed 20 percent of its annual net earnings after deducting expenses related to the Banks' Affordable Housing Programs and operating expenses. Section 607 also added a new provision requiring the Banks' regulator, the Finance Board, to extend or shorten the period during which the Banks must continue to make payments to the Funding Corporation, based on a method described in section 607. Interim § 1510.5(a)(2) reflects these statutory changes.

Section 1510.5(b) of the interim final rule requires the Funding Corporation on a quarterly basis to obtain information on the Banks' net earnings as well as projections from the FSLIC Resolution Fund in order to determine amounts that the Funding Corporation can expect to obtain from those entities to fund the next four quarterly interest payments.

Section 1510.5(c) of the interim final rule requires the Funding Corporation to submit to the Secretary for approval a report showing the amounts of the next four quarterly interest payments due and the amounts projected to be available to make those payments from earnings on Funding Corporation assets not invested in the Principal Fund,

payments from the Banks, and amounts transferred from the FSLIC Resolution Fund.

Section 1510.5(d) of the interim final rule carries forward provisions in existing § 1510.11 and § 1510.12 of the operations regulation regarding the coordination of payments from the Banks, the FSLIC Resolution Fund, and the Secretary to the Funding Corporation to cover interest on its obligations.

Interim § 1510.5(d) also adds new provisions dealing with funds transferred from the FSLIC Resolution Fund. The existing regulation does not specifically address the procedure under which the Funding Corporation is to obtain funds from the FSLIC Resolution Fund. In the past, specific procedures were not necessary because the FSLIC Resolution Fund had no funds to transfer. Now that the FSLIC Resolution Fund has received the assets and liabilities from the former RTC, there may be net proceeds from the sale of those assets available to fund interest payments on Funding Corporation obligations. Consequently, the Funding Corporation must have a procedure in place under which it requests any funds available from the FSLIC Resolution Fund after requesting funds from the Banks but before requesting funds from the Secretary.

Under an existing arrangement with the Secretary, the Funding Corporation must request funds from the Secretary at least five business days before the Funding Corporation's quarterly interest payments are due. As part of its request, the Funding Corporation must certify as to the amounts available from the prior funding sources. Consequently, the Funding Corporation must have a process in place that allows it to meet the timing requirements of its arrangement with the Secretary while having a relatively high degree of certainty as to the amounts available from the other funding sources. Interim § 1510.5(d) establishes a procedure for this process.

Amounts available from the first statutorily designated funding source—earnings on Funding Corporation assets not invested in the Principal Fund—are under the direct control of the Funding Corporation. Therefore, interim § 1510.5(d) does not provide a procedure for obtaining funds from this source.

As to the second funding source—the Banks—interim § 1510.5(d)(1) provides that as soon as practicable after the end of each quarter, the Funding Corporation must obtain from each Bank a report of its actual net earnings for that quarter. Not less than six business days prior to the interest payment due date, the Funding Corporation must notify each Bank in writing of the interest payment due date and the amount of the payment due from the Bank.

Interim § 1510.5(d)(2) provides that on the day the Funding Corporation notifies the Banks of the payments due from them, the Funding Corporation must notify the FSLIC Resolution Fund of: (1) The interest payment due date; (2) the aggregate amount of the quarterly interest payment due on that date; and (3) the amount of the quarterly interest payment that will be funded by the two prior funding sources. In addition, the Funding Corporation must request that the FSLIC Resolution Fund transfer available funds to the Funding Corporation by noon on the fifth business day prior to the interest payment due date.

Section 1510.5(d)(3) of the interim final rule provides that no less than five business days prior to the interest payment due date, the Funding Corporation must request any payment that may be necessary from the Secretary by providing a certification, in a form satisfactory to the Secretary, stating the total amounts of the quarterly interest payment to be paid by the Funding Corporation from sources other than the Secretary and the amounts necessary to make up the deficiency. Consistent with section 21B(f)(2)(E) of the Act, the interim final rule provides that any amount paid by the Secretary becomes a liability of the Funding Corporation to be repaid to the Secretary upon the dissolution of the Funding Corporation, to the extent of its remaining assets.

6. Section 1510.6—What Must the Funding Corporation Do With Surplus Funds?

Section 1510.6 of the interim final rule streamlines and carries forward without substantive change the provisions in existing § 1510.3 of the operations regulation, entitled ''Authorization of establishment of investment policies and procedures''.

7. Section 1510.7—What Are the Funding Corporation's Reporting Requirements?

Section 1510.7 of the interim final rule consolidates provisions in existing § 1510.13, entitled ''Reports to Board'', and § 1510.14, entitled ''Reports to Congress''. Existing § 1510.13 requires the Funding Corporation to provide a quarterly report to the Board of specific items of information dealing with the capitalization of the Principal Fund and the issuance of Funding Corporation obligations. Most of the items required to be in the report are no longer relevant to the ongoing oversight of the Funding Corporation. Therefore, the interim final rule removes the quarterly reporting requirement in existing § 1510.13, but adds a new provision in interim § 1510.7 under which the Funding Corporation must provide the Secretary such reports as the Secretary may require.

8. Section 1510.8—What Are the Audit Requirements for the Funding Corporation?

Existing § 1510.15 of the operations regulation provides that an office designated by the Board shall review the books and records of the Funding Corporation at least annually to determine whether the Funding Corporation is performing its functions in accordance with the provisions of section 21B of the Act and the operations regulation. The Funding Corporation currently complies with this provision by obtaining an annual audit by an independent external auditor. In addition, the Funding Corporation is audited annually as part of the internal audit of the Office of Finance. Under section 21B(h)(3) of the Act and section 105 of the Government Corporation Control Act, *see* 31 U.S.C. 9105, the Comptroller General reviews the workpapers associated with the annual external audit. Interim § 1510.8 carries forward and streamlines existing § 1510.15 and conforms its provisions to reflect the Funding Corporation's current practice of obtaining an annual external audit.

The Secretary requests comment on all aspects of the interim final rule.

III. Administrative Procedure Act

This rule makes technical amendments to the regulation governing the operations of the Funding Corporation that conform the regulation to changes in the law and that do not affect the general public. For this reason, it has been determined that publishing this rule with notice and an opportunity for public comment is unnecessary pursuant to 5 U.S.C. 553(b). The Treasury Department, however, will consider any public comments on the interim final rule received on or before April 7, 2000. For the same reasons, pursuant to 5 U.S.C. 553(d), it is determined that there is good cause for the interim final rule to become effective immediately upon publication.

IV. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

V. Executive Order 12866

This interim final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects

12 CFR Part 1510

Federal home loan banks, Federal Reserve System, Resolution Funding Corporation, Securities.

Authority and Issuance

For the reasons set out in the preamble 12 CFR part 1510 is revised to read as follows:

PART 1510—RESOLUTION FUNDING CORPORATION OPERATIONS

Sec.

§ 1510.1 Authority, purpose, and scope.
§ 1510.2 Definitions.
§ 1510.3 How does the Funding Corporation pay administrative expenses?
§ 1510.4 Who may act as the depositary and fiscal agent for the Funding Corporation?
§ 1510.5 How does the Funding Corporation make interest payments on its obligations?
§ 1510.6 What must the Funding Corporation do with surplus funds?
§ 1510.7 What are the Funding Corporation's reporting requirements?
§ 1510.8 What are the audit requirements for the Funding Corporation?

Authority: 12 U.S.C. 1441b; Sec. 14(d), Pub. L. 105–216, 112 Stat. 910.

§ 1510.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the authority of section 14(d) of the Homeowners Protection Act of 1998 (Public Law 105–216, 112 Stat. 910) and section 21B(l) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(l)).

(b) *Purpose and scope.* The purpose of this part is to provide direction to the Funding Corporation in carrying out its statutory mandate to make interest payments on its outstanding debt obligations. This part also provides direction to the Funding Corporation regarding funding the administrative costs of its operations. This part does not provide direction to the Funding Corporation, however, on activities that the Funding Corporation is authorized to carry out under the Act, but that it previously has completed or is not likely to undertake in the future, such as raising capital and issuing obligations. Although the Funding Corporation continues to have statutory authority to undertake these activities, the circumstances under which it would do so are limited. If such circumstances were to arise, the Secretary has the authority to provide any necessary direction to the Funding Corporation.

(c) *Authority of the Funding Corporation.* The Funding Corporation may exercise all authority granted to it by the Act in accordance with its bylaws, whether or not specifically implemented by regulation, subject to the requirements of this part and such other regulations, orders and directions as the Secretary may prescribe.

§ 1510.2 Definitions.

The following definitions apply to terms used in this part unless the context requires otherwise:

Act means the Federal Home Loan Bank Act (12 U.S.C. 1421 *et seq.*).

Administrative expenses means costs incurred as necessary to carry out the functions of the Funding Corporation, including custodian fees, but does not include any interest on obligations.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Custodian fee means any fee incurred by the Funding Corporation in connection with the transfer of any security to, or the maintenance of any security in, the Funding Corporation Principal Fund and any other expense incurred in connection with the establishment or maintenance of the Funding Corporation Principal Fund.

Directorate means the Directorate of the Funding Corporation established pursuant to section 21B(c) of the Act (12 U.S.C. 1421b(c)).

FDIC means the Federal Deposit Insurance Corporation established pursuant to section 1 of the Federal Deposit Insurance Act (12 U.S.C. 1811, *et seq.*).

Finance Board means the Federal Housing Finance Board established pursuant to section 2A(a)(1) of the Act.

FSLIC Resolution Fund means the Federal Savings and Loan Insurance Corporation Resolution Fund established pursuant to section 11A(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1811, *et seq.*).

Funding Corporation means the Resolution Funding Corporation established pursuant to section 21B(b) of the Act.

Funding Corporation Principal Fund means the separate account established under section 21B(g)(2) of the Act.

Interest payment due date means the date on which the next quarterly interest payments on obligations are due.

Net earnings means net earnings after deducting expenses relating to section 10(j) of the Act (Affordable Housing Program) and operating expenses, but without reduction for chargeoffs and payments to fund interest payments on obligations.

Obligations means bonds issued by the Funding Corporation under section 21B(f) of the Act.

RTC means the Resolution Trust Corporation established pursuant to section 21A(b)(1)(A) of the Act and which terminated on December 31, 1995, pursuant to section 21A(m) of the Act.

Secretary means the Secretary of the Treasury or the designee of the Secretary of the Treasury.

§ 1510.3 How does the Funding Corporation pay administrative expenses?

(a) *The Directorate proposes a budget.* By November 15 of each year, the Directorate must approve and submit to the Secretary a proposed budget for the administrative expenses of the Funding Corporation for the following year.

(b) *The Secretary approves the budget.* The Funding Corporation's budget is subject to the Secretary's prior approval. The proposed budget submitted by the Directorate shall be deemed to be approved by the Secretary unless the Secretary disapproves it within 45 days of the date submitted. The Funding Corporation must transmit a copy of the approved budget to each Bank.

(c) *Budget changes must be approved by the Secretary.* If the Funding Corporation projects or anticipates incurring expenses exceeding its approved budget, the Directorate must submit an amended budget to the Secretary for approval.

(d) *The Funding Corporation collects funds from the Banks to pay its administrative expenses.* At least semiannually, the Funding Corporation must request that each Bank submit within 10 business days of the request payment for a portion of the administrative expenses in the Funding Corporation's budget for the current calendar year. The amount of each Bank's payment must be pro rated according to the percentage of the total outstanding Funding Corporation capital stock owned by the Bank. The Funding Corporation must adjust the amount of each Bank's payment as necessary to reflect differences between aggregate projected and actual administrative expenses incurred during the calendar year and to reflect any changes in estimated aggregate administrative expenses for the coming period. The Funding Corporation must not request payments from the Banks that, in the aggregate, exceed the administrative expenses in the Funding Corporation's approved budget.

§ 1510.4 Who may act as the depositary and fiscal agent for the Funding Corporation?

(a) *In general, the Federal Reserve Banks.* The Funding Corporation must use one or more Federal Reserve Banks as depositaries for or fiscal agents or custodians of the Funding Corporation.

(b) *For administrative accounts, insured depository institutions.* Subject to approval by the Secretary, the Funding Corporation may establish demand deposit accounts at one or more federally insured depository institutions for the management of funds used to pay administrative expenses.

§ 1510.5 How does the Funding Corporation make interest payments on its obligations?

(a) *The Funding Corporation must obtain funds from up to four sources.* The Funding Corporation must pay the interest due on its obligations with funds it obtains from the following sources and in the following order:

(1) Earnings on assets of the Funding Corporation not invested in the Funding Corporation Principal Fund.

(2) To the extent funds identified in paragraph (a)(1) of this section are insufficient, the Funding Corporation must obtain from each Bank in each calendar year payments totaling 20 percent of the net earnings of the Bank. The Funding Corporation must not obtain funds from a Bank under this paragraph after the date upon which the term of the Bank's payment obligation has ended, as determined by the Finance Board pursuant to section 21B(f)(2)(C)(iii) of the Act.

(3) To the extent funds identified in paragraphs (a)(1) and (2) of this section are insufficient, the Funding Corporation must obtain from the FSLIC Resolution Fund amounts available from any net proceeds from the sale of assets received from the RTC by the FSLIC Resolution Fund.

(4) To the extent that funds from the sources identified in paragraphs (a)(1) through (3) of this section are insufficient, the Funding Corporation must obtain from the Secretary the additional amount due.

(b) *The Funding Corporation must obtain projections of funds availability from the Banks and the FSLIC Resolution Fund.* Not later than March 15, June 15, September 15, and December 15 of each year:

(1) The Funding Corporation must obtain from each Bank a statement signed by an officer of such Bank containing sufficient information on the Banks net earnings to enable the Funding Corporation to make quarterly projections of funds available from the Bank for the current quarter and the next three quarters; and

(2) The Funding Corporation must obtain from an authorized representative of the FSLIC Resolution Fund projections of the amount of funds available in the current quarter and the next three quarters from the net proceeds from the sale of received from the RTC.

(c) *The Funding Corporation must report funding projections to the Secretary.* Not later than March 20, June 20, September 20, and December 20 of each year, the Funding Corporation must submit to the Secretary for approval a report containing:

(1) The aggregate amounts of each of the next four quarterly interest payments due on obligations; and

(2) The amounts projected to be available to fund such payments from:

(i) Earnings on assets of the Funding Corporation not invested in the Funding Corporation Principal Fund;

(ii) Payments from the Banks; and

(iii) Funds transferred from the FSLIC Resolution Fund.

(d) *The Funding Corporation must request funds from the Banks, the FSLIC Resolution Fund, and the Secretary*—(1) *Requests to the Banks.* As soon as practicable after the end of each quarter, the Funding Corporation must obtain from each Bank a report of its actual net earnings for that quarter. Not less than six business days prior to the interest payment due date, the Funding Corporation must notify each Bank in writing of the interest payment due date and the amount of the payment due from the Bank. To the extent funds identified in paragraph (a)(1) of this section are insufficient to pay the interest due, the amount of each Bank's payment must be 20 percent of the Bank's actual quarterly net earnings, taking into account any adjustment to the Bank's earnings for any previous quarters. The Funding Corporation must request the Bank to provide payment through wiring immediately available and finally collected funds to the Funding Corporation no later than the interest payment due date.

(2) *Request to the FSLIC Resolution Fund.* On the day the Funding Corporation notifies the Banks of the payments due from them under paragraph (d)(1) of this section, the Funding Corporation must:

(i) Notify the FSLIC Resolution Fund in writing of:

(A) The interest payment due date;

(B) The aggregate amount of the quarterly interest payment due on that date; and

(C) The amount of the quarterly interest payment that will be funded by earnings on assets of the Funding Corporation not invested in the Funding Corporation Principal Fund and payments due from the Banks; and

(ii) Request that the FSLIC Resolution Fund transfer to the Funding Corporation by noon on the fifth business day prior to the interest payment due date any funds available from the net proceeds from the sale of assets received from the RTC, to the extent funds identified in paragraphs (a)(1) and (2) of this section are insufficient to pay the interest due.

(3) *Request to the Secretary.* No less than five business days prior to the interest payment due date, the Funding Corporation must request payment from the Secretary by providing a certification, in a form satisfactory to the Secretary, stating the total amounts of the quarterly interest payment to be paid by the Funding Corporation from sources other than the Secretary and the amounts necessary to make up the deficiency. Any amount paid by the Secretary becomes a liability of the Funding Corporation to be repaid to the Secretary upon the dissolution of the Funding Corporation, to the extent of its remaining assets.

§ 1510.6 What must the Funding Corporation do with surplus funds?

If the Funding Corporation has funds that are not needed for current interest payments on obligations, it must invest the funds in obligations of the United States issued by the Secretary, in accordance with an investment policy approved by the Secretary.

§ 1510.7 What are the Funding Corporation's reporting requirements?

In addition to the budget submission required by § 1510.3 and the funding projection reports required by § 1510.5, the Funding Corporation must prepare such reports as the Secretary may require, including reports necessary to assist the Secretary in making the annual report to Congress and the President on the Funding Corporation under section 21B(i) of the Act.

§ 1510.8 What are the audit requirements for the Funding Corporation?

The Funding Corporation must obtain an audit of its books and records by an independent external auditor at least annually.

Dated: February 11, 2000.

Gary Gensler,

Under Secretary of the Treasury.

[FR Doc. 00–5435 Filed 3–7–00; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–70–AD; Amendment 39–11608; AD 2000–04–25]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to BHTC Model 407 helicopters, that requires modifying the door latch assemblies on all four crew and passenger doors. This amendment is prompted by an incident that occurred during a manufacturer's flight test, in which a door latch assembly broke, preventing occupants in the helicopter from opening the door. The actions specified by this AD are intended to prevent a door latch rod assembly from disengaging from the door handle and preventing helicopter occupants from opening the door.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to BHTC Model 407 helicopters was published in the **Federal Register** on December 16, 1999 (64 FR 70201). That action proposed to require modifying the door latch assemblies on all four crew and passenger doors.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's 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.

The FAA estimates that 146 helicopters of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per helicopter to accomplish the modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $210. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $83,220.

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

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. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–04–25 Bell Helicopter Textron Canada: Amendment 39–11068. Docket No. 98–SW–70–AD.

Applicability: Model 407 helicopters, serial numbers 53000 through 53228, with door latch assemblies, part number (P/N) 20898–401, −402, −405, and −406, installed, certificated in any category.

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

Compliance: Required within 100 hours time-in-service, unless accomplished previously.

To prevent a door latch rod assembly from disengaging from the door handle and preventing helicopter occupants from opening the door, accomplish the following:

(a) Modify each door latch assembly, P/N 20898–401, –402, –405, and –406, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 407–98–18, dated May 27, 1998.

(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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(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 helicopter to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin No. 407–98–18, dated May 27, 1998. 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 Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel,

Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 12, 2000.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–98–19, dated July 28, 1998.

Issued in Fort Worth, Texas, on February 24, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–5008 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–70–AD; Amendment 39–11609; AD 2000–04–26]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher GmbH & Co. Model ASW–27 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Alexander Schleicher GmbH & Co. (Alexander Schleicher) Model ASW–27 sailplanes. This AD requires inspecting the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 millimeters (mm) (1/10-inch wide), and adjusting any clearance that does not meet the criteria. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect interference in the elevator control circuit, which, if not corrected, could result in the elevator control jamming with possible loss of control of the sailplane.

DATES: Effective April 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 25, 2000.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36163 Poppenhausen, Federal Republic of Germany; telephone: ++ 49 6658 89–0; facsimile: ++ 49 6658 89–40. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–70–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Model ASW–27 sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 28, 1999 (64 FR 72584). The NPRM proposed to require inspecting the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 mm (1/10-inch wide), and adjusting any clearance that does not meet the criteria. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Alexander Schleicher Technical Note No. 5, dated July 16, 1999.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry will be affected by the inspection, that it will take approximately 1 workhour per sailplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $1,800, or $60 per sailplane.

The FAA estimates that it will take approximately 2 workhours per sailplane to accomplish the adjustment, if necessary, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the adjustment on U.S. operators is estimated to be $3,600, or $120 per sailplane.

Compliance Time of This AD

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). When proper clearance is not provided inside the fuselage tail boom to the fin intersection, the 90-degree lever of the elevator controls rubs against the cut-out of the lower fin rib. Although the consequential jamming of the elevator controls is a result of sailplane operation, improper clearance will be prevalent at the time of manufacture. Sailplane operation varies among operators. For example, one operator may utilize the sailplane 50 hours TIS in 3 months while it may take another 12 months or more to accumulate 50 hours TIS. In order to assure that improper clearance is detected and corrected in a timely manner, the compliance time is required ''within the next 90 calendar days after the effective date of this AD.''

Regulatory Impact

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

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 copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–04–26 Alexander Schleicher GMBH & CO. Segelflugzeugbau: Amendment 39–11609; Docket No. 99–CE–70–AD.

Applicability: Model ASW–27 sailplanes, serial numbers 27002 through 27104, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect interference in the elevator control circuit, which, if not corrected, could result in the elevator control jamming with possible loss of control of the sailplane, accomplish the following:

(a) Within the next 90 calendar days after the effective date of this AD, inspect the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 millimeters (mm) (1/10-inch wide). Prior to further flight, adjust any clearance that does not meet the criteria. Accomplish these actions in accordance with the Action section of Alexander Schleicher Technical Note No. 5, dated July 16, 1999.

(b) 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 sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 901 Locust, Room 301, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 5, dated July 16, 1999, should be directed to Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36163 Poppenhausen, Federal Republic of Germany; telephone: ++ 49.6658.89–0; facsimile: ++ 49.6658.89–40. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(e) The inspection and modification required by this AD shall be done in accordance with Alexander Schleicher Technical Note No. 5, dated July 16, 1999. 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 Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36163 Poppenhausen, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 1999–283, Effective Date: September 9, 1999.

(f) This amendment becomes effective on April 25, 2000.

Issued in Kansas City, Missouri, on February 25, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5134 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–186–AD; Amendment 39–11611; AD 2000–05–02]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050, 200, 500, and 600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050, 200, 500, and 600 series airplanes, that requires installation of certain components, and revisions of the Airplane Flight Manual. This action is necessary to prevent undetected failures of the horizontal and vertical stabilizer de-icing system, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. 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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 Fokker Model F27 Mark 050, 200, 500, and 600 series airplanes was published in the **Federal Register** on January 4, 2000 (65 FR 251). That action proposed to require installation of certain components, and revisions of the Airplane Flight Manual (AFM).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 37 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required. AFM revision for operation of the airplane in the event of a failure of the de-icing system, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required AFM revision on U.S. operators is estimated to be $2,220, or $60 per airplane.

It will take approximately 125 work hours per airplane to accomplish the required installations, at an average labor rate of $60 per work hour. Required parts will cost approximately $11,000 per airplane. Based on these figures, the cost impact of the required installations on U.S. operators is estimated to be $684,500, or $18,500 per airplane.

The cost impact figures discussed above are 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.

None of the Model F27 Mark 050 series airplanes affected by this action are on the U.S. Register. Should an affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 1 work hour per airplane to accomplish the required AFM revision for checks of the de-icing system, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required AFM revision on U.S. operators is estimated to be $60 per airplane.

Regulatory Impact

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

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 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–05–02 Fokker Services B.V: Amendment 39–11611. Docket 98–NM–186–AD.

Applicability: Model F27 Mark 050 series airplanes as listed in Fokker Service Bulletin SBF50–30–025, Revision 2, dated October 21, 1998; and Model F27 Mark 200, 500, and 600 series airplanes, serial numbers 10603 through 10692 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 request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected failures of the horizontal and vertical stabilizer de-icing system, which could result in reduced controllability of the airplane, accomplish the following:

AFM Revision (Mark 050 Airplanes)

(a) For Model F27 Mark 050 series airplanes on which a de-icing distributor valve heating system has not been installed (Reference Fokker Service Bulletin SBF50–30–024): Within 10 days after the effective date of this AD, revise the Limitations and Normal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD into the AFM.

''PRE-FLIGHT INSPECTION PROCEDURE FOR FLIGHTS INTO KNOWN OR FORECAST ICING CONDITIONS'

- Cycle the airframe de-icing system twice through the Manual 1 and 2 position during ground operation.
- Visually check the tailplane leading edge de-icing boots for inflation.

Installations and AFM Revision (Mark 050 Airplanes)

(b) For Model F27 Mark 050 series airplanes: Within 18 months after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD.

(1) Install a monitoring system for the horizontal and vertical stabilizer de-icing system in accordance with Fokker Service Bulletin SBF50–30–025, Revision 2, dated October 21, 1998. Prior to further flight thereafter, revise the FAA-approved AFM to incorporate the flight manual changes described in Fokker Manual Change Notification (MCNO) F50–001, dated October 23, 1997. Following accomplishment of the installation, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(2) Install a modified pressure switch in the monitoring system in accordance with Fokker Service Bulletin SBF50–30–026, dated August 11, 1999.

Installations and AFM Revision (Mark 200, 500, 600 Airplanes)

(c) For Model F27 Mark 200, 500, and 600 series airplanes: Within 18 months after the effective date of this AD, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD.

(1) Install a monitoring system for the horizontal and vertical stabilizer de-icing system in accordance with Fokker

Service Bulletin F27/30–44, dated February 20, 1998. Prior to further flight thereafter, revise the FAA-approved AFM to incorporate the flight manual changes described in Fokker MCNO F27–004, dated February 10, 1998.

(2) Install a modified pressure switch in the monitoring system in accordance with Fokker Service Bulletin F27/30–45, dated August 11, 1999.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with the following Fokker service bulletins, including Fokker manual change notifications, as applicable, which contain the following specified effective pages:

Document referenced and date	Page No.	Revision level shown on page	Date shown on page
SBF50–30–025, Revision 2, Oct. 21, 1998	1–3, 14, 15, 17–19	2	Oct. 21, 1998.
	4–13, 16, 22–25, 27–41, 43–45.	Original	Oct. 31, 1997.
	20, 21, 26, 42	1	June 10, 1998.
Manual Change Notification MCNO F50–001			
SBF27/30–44, February 20, 1998	1	Original	Oct. 23, 1997.
	1–31	Original	Feb. 20, 1998.
Manual Change Notification MCNM F27–003			
	1–5	Original	Dec. 10, 1997.
Manual Change Notification MCNO F27–004			
SBF50–30–026, Aug. 11, 1999	1–2	Original	Feb. 10, 1998.
	1–10	Original	Aug. 11, 1999.
F27/30–45, August 11, 1999	1–12	Original	Aug. 11, 1999.

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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. 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.

Note 3: The subject of this AD is addressed in Dutch airworthiness directives 1998–019/2, and 1997–113/3, both dated June 18, 1999.

(g) This amendment becomes effective on April 12, 2000.

Issued in Renton, Washington, on February 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5334 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–241–AD; Amendment 39–11613; AD 2000–05–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that requires repetitive inspections to detect cracking of the fuselage skin in the area of the VHF2 antenna, and repair, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct such cracking, which could result in cabin depressurization of the airplane.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 2000.

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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601

Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 A330 and A340 series airplanes was published in the **Federal Register** on December 30, 1999 (64 FR 73441). That action proposed to require repetitive inspections to detect cracking of the fuselage skin in the area of the VHF2 antenna, and repair, if necessary. That action also proposed to provide for optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 6 work hours to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD will be $360 per airplane, per inspection cycle.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it will take approximately 112 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this optional terminating action is estimated to be $6,720 per airplane.

Regulatory Impact

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

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

14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–05–04 Airbus: Amendment 39–11613. Docket 99–NM–241–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category; except those on which Airbus production modification 46025 is installed or on which Airbus Service Bulletin A330–53–3097, Revision 01, dated May 21, 1999 (for Model A330 series airplanes), or Service Bulletin A340–53–4108, Revision 01, dated May 21, 1999 (for Model A340 series airplanes), has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the fuselage skin in the area of the VHF2 antenna, which could result in cabin depressurization of the airplane, accomplish the following:

Detailed Visual Inspection

(a) At the latest of the times specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, as applicable: Perform a detailed visual inspection (without removal of the VHF2 antenna) of the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the area of the VHF2 antenna to detect cracks, in accordance with Airbus Service Bulletin A330–53–3094, Revision 02, dated May 28, 1998 (for Model A330 series airplanes), or Service Bulletin A340–53–4105, Revision 02, dated May 25, 1998 (for Model A340 series airplanes) (hereinafter referred to as the applicable service bulletin). Thereafter, if no cracks are detected, repeat the detailed visual inspection every 36 flight hours until accomplishment of the high frequency eddy current (HFEC) inspection required by paragraph (b) of this AD.

(1) Prior to the accumulation of 900 total flight hours.

(2) Within 1,250 flight hours since accomplishment of the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin, if the interim repair has been accomplished prior to the effective date of this AD.

(3) Within 300 flight hours since the most recent HFEC inspection accomplished in accordance with the applicable service bulletin, if the most recent HFEC inspection has been accomplished prior to the effective date of this AD.

(4) Within 36 flight hours after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

High Frequency Eddy Current Inspection

(b) Perform a high frequency eddy current (HFEC) inspection to detect cracks of the fuselage skin aft of frame 54, between the

airplane centerline and stringer 56R in the area of the VHF2 antenna, in accordance with the applicable service bulletin, at the applicable time specified by paragraph (b)(1) or (b)(2) of this AD. Accomplishment of this inspection terminates the requirements of paragraph (a) of this AD.

(1) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has not been accomplished: Prior to the accumulation of 900 total flight hours on the airplane, or within 500 flight hours after the effective date of this AD, whichever occurs later. Thereafter, accomplish the follow-on actions of paragraph (c) or (d) of this AD, as applicable.

(2) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has been accomplished: Within 1,250 flight hours after accomplishment of the interim repair, or within 500 flight hours after the effective date of this AD, whichever occurs later.

Repetitive Inspections

(c) If no crack is detected during the HFEC inspection required by paragraph (b) of this AD, accomplish the repetitive inspections required by paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has not been accomplished, accomplish the actions specified by paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Repeat the HFEC inspection specified by paragraph (b) at intervals not to exceed 500 flight hours.

(ii) Within 300 flight hours after each HFEC inspection required by this AD: Perform a detailed visual inspection (without removal of the VHF2 antenna) of the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the area of the VHF2 antenna to detect cracks, in accordance with the applicable service bulletin. Thereafter, if no cracks are detected, repeat the detailed visual inspection every 36 flight hours until accomplishment of the next HFEC inspection required by paragraph (c)(1)(i) of this AD.

(2) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has been accomplished, repeat the HFEC inspection specified by paragraph (b) of this AD at intervals not to exceed 1,250 flight hours.

Corrective Actions

(d) If any crack is detected during any inspection required by paragraph (a), (b), or (c) of this AD, and the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has not been accomplished: Prior to further flight, accomplish the actions specified by paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If only one crack is detected and that crack is 9.45 inches or less, and is within the limits specified by the applicable service bulletin: Install the interim repair specified in paragraph 2.C.(4) of the applicable service bulletin. Thereafter, repeat the HFEC inspection specified by paragraph (b) of this AD at intervals not to exceed 1,250 flight hours.

Note 3: The interim repair referenced by this AD consists of cutting out the cracked portion of the fuselage skin, and installing a filler plate in the skin cutout, two doublers, and shims, as described in paragraph 2.C.(4) of the applicable service bulletin.

Note 4: Accomplishment of the interim repair in accordance with paragraph 4.3 of Airbus Industrie All Operator Telex (AOT) 53–10, dated September 24, 1997, is acceptable for compliance with the requirements of paragraph (d)(1) of this AD.

(2) If any crack is detected that is longer than 9.45 inches, or is outside the limits specified by the service bulletin, or if more than one crack is detected: Repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(e) If any crack is detected during any inspection required by paragraph (a), (b), or (c) of this AD and the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has been accomplished: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(f) Accomplishment of the modification as described in Airbus Service Bulletin A330–53–3097, Revision 01, dated May 21, 1999 (for Model A330 series airplanes), or Service Bulletin A340–53–4108, Revision 01, dated May 21, 1999 (for Model A340 series airplanes), terminates the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

Note 5: Accomplishment of Airbus production modification 46025, or the modification as described in Airbus Service Bulletin A330–53–3097, dated July 29, 1998 (for Model A330 series airplanes), or Service Bulletin A340–53–4108, dated July 31, 1998 (for Model A340 series airplanes), also constitutes terminating action for the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

Alternative Methods of Compliance

(g) 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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(i) Except as provided by paragraphs (d)(2) and (e) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A330–53–3094, Revision 02, dated May 28, 1998; or Airbus Service Bulletin A340–53–4105, Revision 02, dated May 25, 1998; as applicable. 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.

Note 7: The subject of this AD is addressed in French airworthiness directives 1998–192–071(B)R1 (for Model A330 series airplanes) and 1998–193–089(B)R1 (for Model A340 series airplanes), both dated March 24, 1999.

(j) This amendment becomes effective on April 12, 2000.

Issued in Renton, Washington, on February 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5332 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–337–AD; Amendment 39–11616; AD 2000–05–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300 and A300–600 series airplanes, that currently requires repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That AD also

requires modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This amendment expands the current inspection area for certain airplanes. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of April 12, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 20, 1999 (64 FR 49966, September 15, 1999).

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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–19–26, amendment 39–11313 (64 FR 49966, September 15, 1999), which is applicable to certain Airbus Model A300 and A300–600 series airplanes, was published in the **Federal Register** on December 30, 1999 (64 FR 73439). The action proposed to continue to require repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary; and modification of Gear Rib 5 of the MLG attachment fittings, which would constitute terminating action for the repetitive inspections. That action also proposed to expand the current inspection area for certain airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 164 airplanes of U.S. registry that will be affected by this AD.

The modification that is currently required by AD 99–19–26, and retained in this AD, takes approximately 62 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $10,270 per airplane. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $2,294,360, or $13,990 per airplane.

The new expanded inspections that are required in this AD action will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $59,040, or $360 per airplane.

The cost impact figures discussed above are 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.

Regulatory Impact

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

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. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11313 (64 FR 49966, September 15, 1999), and by adding a new airworthiness directive (AD), amendment 39–11616, to read as follows:

2000–05–07 Airbus Industrie: Amendment 39–11616. Docket 99–NM–337–AD. Supersedes AD 99–19–26, Amendment 39–11313.

Applicability: Model A300 series airplanes, as listed in Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998; and Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998; except airplanes on which Airbus Modification 11912 has been installed in production, or on which Airbus Modification 11932 has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the main landing gear (MLG) attachment fittings, which could result in reduced structural integrity of the airplane, accomplish the following:

Repetitive Inspections

(a) Perform a detailed visual and a high frequency eddy current (HFEC) inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998 (for Model A300–600 series airplanes); or A300–57–0234, Revision 01, dated March 11, 1998 (for Model A300 series airplanes); as applicable; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. After the effective date of this AD, only Airbus Service Bulletin A300–57A0234, Revision 02, dated June 24, 1999, or Revision 03, including Appendix 01, dated September 2, 1999 (for Model A300 series airplanes); or A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999 (for Model A300–600 series airplanes); as applicable; shall be used. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles.

Detailed Visual Inspection

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of March 9, 1998: Inspect within 500 flight cycles after March 9, 1998.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of March 9, 1998: Inspect prior to the accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after March 9, 1998, whichever occurs later.

Note 3: Accomplishment of the initial detailed visual and HFEC inspections in accordance with Airbus Service Bulletin A300–57A0234 or A300–57A6057, both dated August 1, 1997, as applicable, is considered acceptable for compliance with the initial inspections required by paragraph (a) of this AD.

Repair

(b) If any crack is detected during any inspection required by this AD, prior to further flight, accomplish the requirements of paragraphs (b)(1) or (b)(2) of this AD, as applicable.

(1) If a crack is detected at one hole only, and the crack does not extend out of the spotface of the hole, repair in accordance with Airbus Service Bulletin A300-57A0234, Revision 02, dated June 24, 1999, or Revision 03, including Appendix 01, dated September 2, 1999 (for Model A300 series airplanes); or A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999 (for Model A300–600 series airplanes); as applicable.

(2) If a crack is detected at more than one hole, or if any crack at any hole extends out of the spotface of the hole, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Generale de l'Aviation Civile (or its delegated agent).

Terminating Modification

(c) Prior to the accumulation of 21,000 total flight cycles, or within 2 years after October 20, 1999 (the effective date of AD 99–19–26, amendment 39–11313), whichever occurs later: Modify Gear Rib 5 of the MLG attachment fittings at the lower flange in accordance with Airbus Service Bulletin A300–57–6088, Revision 01, including Appendix 01 (for Model A300–600 series airplanes), or A300–57–0235, Revision 01, including Appendix 01 (for Model A300 series airplanes), all dated February 1, 1999, as applicable. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 4: Accomplishment of the modification required by paragraph (d) of this AD prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–57–6088 or A300–57–0235, both dated August 1, 1998; as applicable; is acceptable for compliance with the requirements of that paragraph.

Alternative Methods of Compliance

(d)(1) 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, International Branch, ANM–116, 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, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–19–26, amendment 39–11313, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (b)(2) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998; Airbus Service Bulletin A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999; Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998; Airbus Service Bulletin A300–57A0234, Revision 02, dated June 24, 1999; Airbus Service Bulletin A300–57A0234, Revision 03, including Appendix 01, dated September 2, 1999; Airbus Service Bulletin A300–57–6088, Revision 01, including Appendix 01, dated February 1, 1999; and Airbus Service Bulletin A300–57–0235, Revision 01, including Appendix 01, dated February 1, 1999; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999; Airbus Service Bulletin A300–57A0234, Revision 02, dated June 24, 1999; and Airbus Service Bulletin A300–57A0234, Revision 03, including Appendix 01, dated September 2, 1999; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998; Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998; Airbus Service Bulletin A300–57–6088, Revision 01, including Appendix 01, dated February 1, 1999; and Airbus Service Bulletin A300–57–0235, Revision 01, including Appendix 01, dated February 1, 1999; was approved previously by the Director of the Federal Register as of October 20, 1999 (64 FR 49966, September 15, 1999).

(3) 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.

Note 6: The subject of this AD is addressed in French airworthiness directive 1998–151–247(B), dated June 16, 1999.

(g) This amendment becomes effective on April 12, 2000.

Issued in Renton, Washington, on February 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5331 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–353–AD; Amendment 39–11617; AD 2000–05–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319 and A321 series airplanes, that requires replacement of the actuator of the ram air turbine (RAT) with a new actuator. This amendment also requires modification of the actuator wiring. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the RAT to deploy in an emergency situation, and consequent loss of electrical and hydraulic systems.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 2000.

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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 A319 and A321 series airplanes was published in the **Federal Register** on December 30, 1999 (64 FR 73438). That action proposed to require replacement of the actuator of the ram air turbine (RAT) with a new actuator. That action also proposed to require modification of the actuator wiring.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the parts manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,320, or $240 per airplane.

The 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.

Regulatory Impact

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

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. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

2000–05–08 Airbus Industrie: Amendment 39–11617. Docket 99–NM–353–AD.

Applicability: Model A319 and A321 series airplanes, certificated in any category; except those on which Airbus Modification 27015 or Airbus Service Bulletin A320–29–1088, dated February 23, 1999, has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the ram air turbine (RAT) to deploy in an emergency situation, and consequent loss of electrical and hydraulic systems, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Replace the RAT actuator with an improved actuator, and modify the wiring of the RAT actuator; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1088, dated February 23, 1999.

Alternative Methods of Compliance

(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, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(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.

Incorporation by Reference

(d) The replacement and modification shall be done in accordance with Airbus Service Bulletin A320–29–1088, dated February 23, 1999. 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.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–412–141(B), dated October 20, 1999.

(e) This amendment becomes effective on April 12, 2000.

Issued in Renton, Washington, on February 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5330 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–261–AD; Amendment 39–11614; AD 2000–05–05]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235–100 and CN–235–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all CASA Model CN–235–100 and CN–235–200 series airplanes, that requires replacement of existing anti-icing distributor valves with new, improved valves. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent ice accumulation on the wings or tail of the airplane, which could result in reduced controllability of the airplane.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 all CASA Model CN–235–100 and CN–235–200 series airplanes was published in the **Federal Register** on January 5, 2000 (65 FR 399). That action proposed to require replacement of existing anti-icing distributor valves with new, improved valves.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $4,671 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,942, or $6,471 per airplane.

The 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.

Regulatory Impact

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

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 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–05–05 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–11614. Docket 99–NM–261–AD.

Applicability: All Model CN–235–100 and CN–235–200 series airplanes, 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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the wings or tail of the airplane, which could result in reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 4 months after the effective date of this AD, replace the existing anti-icing distributor valves, having part number (P/N) AC960013, in the wing and tail areas of the airplane, with new, improved valves, having P/N AC911016, in accordance with CASA Service Bulletin SB–235–30–14, dated August 13, 1999.

(b) As of the effective date of this AD, no person shall install a distributor valve having P/N AC960013 on any airplane.

Alternative Methods of Compliance

(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, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(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.

Incorporation by Reference

(e) The replacement shall be done in accordance with CASA Service Bulletin SB–235–30–14, dated August 13, 1999. 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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 04/99, dated July 30, 1999.

(f) This amendment becomes effective on April 12, 2000.

Issued in Renton, Washington, on February 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5329 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–334–AD; Amendment 39–11615; AD 2000–05–06]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model 400A and 400T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon (Beech) Model 400A and 400T series airplanes, that requires a one-time inspection to detect incorrect wiring of the engine fire extinguisher bottle squibs, and corrective action, if necessary. It also requires a modification to the wiring and the addition of wire harness and bottle labeling for future reference. This amendment is prompted by reports of incorrect wiring of the engine fire extinguisher bottle squibs. The actions specified by this AD are intended to prevent failure of the engine fire extinguisher bottle to discharge, or discharge of the wrong engine fire extinguisher bottle.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Beechjet/Premier Technical Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. 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 FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Dixon, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4152; fax (316) 946–4407.

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 Raytheon (Beech) Model 400A and 400T series airplanes was published in the **Federal Register** on December 6, 1999 (64 FR 68060). That action proposed to require a one-time inspection to detect incorrect wiring of the engine fire extinguisher bottle squibs, and corrective action, if necessary. It also proposed to require a modification to the wiring and the addition of wire harness and bottle labeling for future reference.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 350 airplanes of the affected design in the worldwide fleet. The FAA estimates that 310 airplanes of U.S. registry will be affected by this AD.

It is estimated that it will take approximately 1 work hour per airplane to accomplish the required inspection,

at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection portion of the AD on U.S. operators is estimated to be $18,600, or $60 per airplane.

It is estimated that it will take approximately 2 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification portion of the required AD on U.S. operators is estimated to be $37,200, or $120 per airplane.

Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $55,800, or $180 per airplane.

The cost impact figures discussed above are 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. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

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

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 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–05–06 Raytheon Aircraft Company (Formerly Beech): Amendment 39–11615. Docket 99–NM–334–AD.

Applicability: Model 400A series airplanes, serial numbers RK–45 and RK–49 through RK–209 inclusive; Model 400T series airplanes (T–1A), serial numbers TT–01 through TT–180 inclusive; and Model 400T series airplanes (TX), serial numbers TX–01 through TX–09 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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine fire extinguisher bottle to discharge, or discharge of the wrong engine fire extinguisher bottle, accomplish the following:

Inspection and Corrective Action

(a) Within 50 flight hours after the effective date of this AD: Perform a one-time general visual inspection of the left and right engine fire extinguisher bottle squibs to detect wiring that is incorrect as specified by Raytheon Aircraft Service Bulletin SB 26–3250, Revision 1, dated July 1999. Perform the inspection in accordance with the service bulletin. If any incorrect wiring is detected, prior to further flight, repair it in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Modification

(b) Within 200 flight hours after the effective date of this AD: Modify and re-label the wiring of the left and right engine fire extinguisher bottle squibs, in accordance with Raytheon Aircraft Service Bulletin SB 26–3250, Revision 1, dated July 1999.

Alternative Methods of Compliance

(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, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

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

Special Flight Permits

(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.

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Aircraft Service Bulletin SB 26–3250, Revision 1, dated July 1999. 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 Raytheon Aircraft Company, Manager Service Engineering, Beechjet/Premier Technical Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 12, 2000.

Issued in Renton, Washington, on February 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5328 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–59–AD; Amendment 39–11605; AD 2000–04–22]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc 524 Series and Trent 768–60 and 772–60 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce plc (RR) RB211–524G2–T–19; RB211–524G3–T–19; RB211–524H2–T–19; RB211 Trent 768-60; and RB211 Trent 772–60 turbofan engines. This AD requires the replacement of the joint bolt assemblies that secure the high-pressure compressor (HPC) to the high-pressure turbine (HPT) of the RB211–524 series and Trent 768 and 772 series turbofan engines. This amendment is prompted by six incidents of bolt failure, one of which resulted in a damaged stage 6 HPC disk following an impact with a separated bolt head. The actions specified in this AD are intended to prevent failure of the HPC-to-HPT joint bolt assemblies, which could result in a cracked stage 6 HPC disk, possible uncontained engine failure, and damage to the airplane.

DATES: Effective April 7, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–59–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov.'' Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax: International Access Code 011, Country Code 44, 1332–249223. This information may be examined at the FAA, New England Region, Office of the Regional 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: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7176, fax 781–238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (RR) RB211–524G2–T–19; RB211–524G3–T–19; RB211–524H2–T–19; and RB211 Trent 768–60 and 772–60 turbofan engines. The CAA advises that it has received six reports of failures of high-pressure compressor (HPC)-to-high-pressure turbine (HPT) joint bolt assemblies, part number (P/N) BLT5543. In one case, a bolt head separated from the rest of the bolt and was propelled toward the HPC stage 6 disk where it caused impact damage to the stage 6 disk. A crack could initiate from the damage and propagate to disk failure. The investigation by the CAA has revealed that material selection, INCO 909, contributed to the failure of the HPC-to-HPT joint bolt assemblies, P/N BLT5543. This condition, if not corrected, could result in failure of the HPC-to-HPT joint bolt assemblies, which could result in a cracked stage 6 HPC disk, possible uncontained engine failure, and damage to the airplane.

Manufacturer's Service Information

RR has issued mandatory service bulletin (SB) RB.211–72–C491, Revision 1, dated October 8, 1999, that specifies procedures for replacement of the INCO 909 HPC-to-HPT joint bolt assemblies, P/N BLT5543, with INCO 718 HPC-to-HPT joint bolt assemblies, P/N BLT5541, during the next normal overhaul when the module is sufficiently disassembled to allow access to the bolts, but no later than June 30, 2000. The CAA classified this service bulletin as mandatory and issued AD 004–10–99, dated October 8, 1999, in order to assure the airworthiness of these RR engines in the UK.

Bilateral Airworthiness Agreement

These engine models are manufactured in the UK and are 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.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, this AD requires replacement of the INCO 909 HPC-to-HPT joint bolt assemblies, P/N BLT5543, with INCO 718 HPC-to-HPT joint bolt assemblies, P/N BLT5541, before further flight. The actions would be required to be accomplished in accordance with the SB described previously.

Difference of Compliance Times Between the Manufacturer's Service Bulletin and This AD

RR SB No. RB.211–72–C491, Revision 1, dated October 8, 1999, requires that the joint bolts be replaced before June 30, 2000. The FAA has determined that since none of these engines are currently in use in the United States, the AD may require that the joint bolts be replaced before further flight.

Immediate Adoption

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are impracticable. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

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

supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–59–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–04–22 Rolls-Royce plc: Amendment 39–11605. Docket 99-NE–59-AD.

Applicability: RB211–524G2-T–19; RB211–524G3-T–19; RB211–524H2-T–19; and RB211 Trent 768–60 and 772–60 turbofan engines installed on, but not limited to Airbus Industrie A330 series and The Boeing Co. 747 series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the HPC-to-HPT joint bolt assemblies, which could result in a cracked stage 6 HPC disk, possible uncontained engine failure, and damage to the airplane accomplish the following:

Replacement of HPC-to-HPT Joint Bolt Assemblies

(a) Replace INCO 909 HPC-to-HPT joint bolt assemblies, part number BLT5543, with INCO 718 HPC-to-HPT joint bolt assemblies, P/N BLT5541, before further flight, in accordance with the section 3.A., Accomplishment Instructions, of Rolls-Royce Mandatory service bulletin (SB) RB.211–72–C491, Revision 1, dated October 8, 1999.

Alternate Methods of Compliance

(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, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

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

Special Flight Permits

(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 aircraft to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Perform the actions required by this AD in accordance with Rolls-Royce Mandatory SB RB.211–72-C491, Revision 1, dated October 8, 1999. 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 Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax: International Access Code 011, Country Code 44, 1332–249223. Copies may be inspected at the FAA, New England Region, Office of the Regional 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.

(e) This amendment becomes effective on April 7, 2000.

Issued in Burlington, Massachusetts, on February 21, 2000.

David A. Downey,

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

[FR Doc. 00–4929 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–34–AD; Amendment 39–11607; AD 2000–04–24]

RIN 2120–AA64

Airworthiness Directives; Honeywell International (formerly AlliedSignal Inc.) 36–300(A), 36–280(B), and 36–280(D) Series Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Honeywell International (formerly AlliedSignal Inc.) 36–300(A), 36–280(B), and 36–280(D) series Auxiliary Power Units (APUs). This amendment requires installation of an external load compressor containment shield, or installation of a load compressor impeller with lower stress concentrations. This amendment is prompted by reports of load compressor impeller failures. The actions specified by this AD are intended to prevent an

uncontained APU failure and damage to the airplane.

DATES: Effective May 8, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Honeywell International, Inc., Attn: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003; telephone 602–365–2493, fax 602–365–5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional 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: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone 562–627–5251, fax 562–627–5210.

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 Honeywell International (formerly AlliedSignal Inc.) 36–300(A), 36–280(B), and 36–280(D) series Auxiliary Power Units (APUs) was published in the **Federal Register** on September 8, 1999 (64 FR 48723). That action proposed to require installation of an external load compressor containment shield at the next shop visit, or 6 months after the effective date of this AD, whichever occurs first. An additional compliance option would be installation of a load compressor impeller, part number (P/N) 3822270–5, to extend cyclic service life to 26,000 cycles-since-new (CSN) before mandatory installation of the containment shield. Operators cannot operate with a load compressor installed, P/N 3822270–5, past 26,000 CSN unless they have installed an external containment shield. That action was prompted by three incidents where the load compressor impellers separated, resulting in uncontained APU failures and debris entering the APU compartment. That condition, if not corrected, could result in an uncontained APU failure and damage to the airplane.

Comments Received

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

Expand the Applicability

One commenter requests to add load compressor impeller, P/Ns 3822270–1 and 3822270–3, to the applicability in addition to P/Ns 3822270–4 and 3822270–5. Both load compressor impellers, P/Ns 3822270–1 and 3822270–3, are affected by the same damper ring groove condition as the impellers already affected by the proposal. The FAA does not concur. While impellers, P/Ns 3822270–1 and 3822270–3, are subject to the same failure mode as P/N 3822270–4 load compressor impellers affected by this AD, all load compressor impellers, P/Ns 3822270–1 and 3822270–3, were required to be reworked to the P/N 3822270–4 configuration by AD 92–21–05. The FAA has added a note referring to the requirement of AD 92–21–05 to remind operators that the old load compressor impeller designs shall no longer be used in service.

Clarification of Cyclic Determination

One commenter requests clarification in how to determine the number of cycles on load compressor impellers in service. The commenter wishes to use its existing system for determining the number of cycles on the load compressor impellers instead of the method described by the manufacturer in its applicable service bulletin (SB). The FAA concurs. Since the AD does not require the use of the SB's cycle counting methodology, operators may use their own approved system to calculate cycles. A note has been added following paragraph (b) to address acceptable methods of determining part cycles.

Subsequent Serial Number (S/N) Parts

The same commenter notes that the AlliedSignal Inc. SB does not list all P/N 3822270–5 impellers in service. The FAA concurs. When the SB was written all subsequent S/N parts that would be produced could not have been anticipated. Since all S/Ns are affected, the applicability paragraph in this final rule has been rewritten to clarify that this AD applies to APUs with P/N 3822270–4 or –5 impellers installed. The applicability paragraph of the AD takes precedence over the AlliedSignal Inc. SB's list of S/Ns. For parts not listed specifically in the SB, the SB provides a procedure to obtain the required information.

Clarification of Compliance Times

The same commenter requests clarification on the compliance times for load compressor impellers, P/N 3822270–5. The commenter notes there appears to be contradictory requirements between paragraphs (b) and (c) of the proposal. Paragraph (b) of the proposal allows operating impellers, P/N 3822270–5, above 26,000 CSN, for six months after the effective date of the AD. Paragraph (c) requires that an external containment shield be in place before operating the APU past 26,000 CSN. The FAA concurs. Paragraph (c) of this final rule has been modified to clarify that the calendar time requirement applies along with the cycle time limit.

Can an Operator Remove the Containment Shield With a Lower Time Impeller Installed?

The same commenter requests clarification on the possibility of removal of the external load compressor containment shield when a lower time impeller is installed. The same commenter also asks why APUs containing P/N 3822270–5 load compressor impellers are not managed to a 26,000 CSN life limit. The commenter states that the proposal does not specifically prohibit removing the external containment shield when P/N 3822270–5 load compressor impellers with less than 26,000 CSN are installed. Operating to a 26,000 CSN limit would be preferred to incorporation of an external load compressor containment shield because it would avoid the potential for APU damage in the event that an impeller does fail. The FAA concurs in part. The commenter may choose, within the requirements of this final rule, to operate with low time P/N 3822270–5 impellers installed without external load compressor containment shields, or with P/N 3822270–5 impellers with more than 26,000 CSN and external load compressor containment shields installed.

Extend Calendar End-Date

One commenter requests an extension from six months to two years for the calendar end-date for APUs containing P/N 3822270–5 load compressor impellers. The commenter believes that there is inadequate information available to accurately determine the actual number of cycles on load compressor impellers. The commenter therefore believes that the only practical means of complying with the AD is the calendar method. Extension from six months to two years would allow for orderly scheduling of the installation of the containment shield with scheduled maintenance intervals. The FAA concurs in part. Although detailed load

compressor impeller cycle times are not known for all APUs, the AlliedSignal SB procedure provides a method for assigning cyclic times which are reasonable based upon review of APU operating history. The FAA has determined that for impellers, P/N 3822270–5, an extension of the calendar end-date from six months to one year would be reasonable to allow incorporation of the containment shield with scheduled maintenance intervals while maintaining an adequate safety level.

APU Model Numbers

The APUs affected by this AD are sometimes referred to as GTCP36–300(A), GTCP36–280(B) and GTCP36–280(D) series APUs. The presence or absence of the letters ''GTCP'' preceding the model number does not affect the applicability of this AD on those APUs. The FAA has added a note to clarify that the AD applies to the specified APU series whether or not the letters ''GTCP'' appear on the dataplate.

New Company Name

Since publication of the proposal, AlliedSignal has adopted the Honeywell International, Inc. name. This final rule has been altered accordingly to refer to the new company name with AlliedSignal Inc. listed as the former company name.

Concur With Proposal

One commenter concurs with the rule as proposed.

Conclusion

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 described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 1,044 APUs of the affected design in the worldwide fleet. The FAA estimates that 465 APUs installed on airplanes of US registry will be affected by this AD, that it will take approximately 6 work hours per Model 36–300(A) APU (85 units) to accomplish the proposed actions, and 8 work hours per Model 36–280(D) APU (380 units), and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,103 per APU. Fifteen installations on domestic Boeing 737 aircraft (Model 36–280(B)) will require a tube assembly kit, which would cost approximately $1,042. The manufacturer has informed the FAA that it may offset some of these costs thereby lowering the total cost to operators. Based on these figures, the total cost impact of the AD on US operators is estimated to be $1,725,270.

Regulatory Impact

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

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. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

2000–04–24 Honeywell International (formerly Allied Signal Inc.):

Amendment 39–11607. Docket 99–NE–34–AD.

Applicability: Honeywell International (formerly AlliedSignal Inc.) 36–300(A), 36–280(B), and 36–280(D) series Auxiliary Power Units (APUs), with load compressor impellers, part numbers (P/Ns) 3822270–4, or 3822270–5, installed. These APUs are installed on but not limited to Airbus Industrie A319, A320, and A321 series; Boeing 737–300, –400, –500 series; and McDonnell Douglas MD–80 series airplanes.

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

Note 2: The presence or absence of the letters ''GTCP'' preceding the model series does not affect the applicability of this AD to the specified model APUs.

Note 3: AD 92–21–05 requires that all APUs with load compressor impellers, P/Ns 3822270–1 or 3822270–3, be reworked to the –4 configuration.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained APU failure and damage to the airplane, accomplish the following:

Load Compressor Impellers, P/N 3822270–4

(a) For APUs with load compressor impellers, P/N 3822270–4, at the next shop visit, or within 6 months after the effective date of this AD, whichever occurs first, accomplish either of the following:

(1) Install an external load compressor containment shield in accordance with AlliedSignal Inc. Service Bulletins (SBs) No. GTCP36–49–7471, dated April 20, 1999, GTCP36–49–7472, dated March 31, 1999, or GTCP36–49–7473, dated March 31, 1999, as applicable; or

(2) Install load compressor impeller, P/N 3822270–5.

Load Compressor Impellers, P/N 3822270–5

(b) For APUs with load compressor impellers, P/N 3822270–5, install an external load compressor containment shield within one year after the effective date of this AD, or prior to the impeller exceeding 26,000 cycles-since-new (CSN), whichever occurs later, in accordance with AlliedSignal Inc. SBs No. GTCP36–49–7471, dated April 20, 1999, GTCP36–49–7472, dated March 31, 1999, or GTCP36–49-7473, dated March 31, 1999, as applicable.

Note 4: Operators may use their own FAA-approved tracking system for determining load compressor impeller cyclic count in lieu of the procedure described in the AlliedSignal Inc. SBs referenced in this AD.

Cyclic Limit without External Containment Shield

(c) Following one year after the effective date of this AD, operators cannot operate with a load compressor, P/N 3822270–5, installed, past 26,000 cycles unless they have installed an external load compressor containment shield.

Definition

(d) For the purpose of this AD, a shop visit is defined as when the APU is inducted into a shop for any reason.

Alternative Methods of Compliance

(e) 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. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 5: 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.

Ferry Flights

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

Incorporation by Reference

(g) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. SBs: GTCP36–49–7471, dated April 20, 1999, GTCP36–49–7472, dated March 31, 1999, and GTCP36–49–7473, dated March 31, 1999. 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 Honeywell International, Inc., Attn: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003; telephone 602–365–2493, fax 602–365–5577. Copies may be inspected at the FAA, New England Region, Office of the Regional 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.

(h) This amendment becomes effective on May 8, 2000.

Issued in Burlington, Massachusetts, on February 25, 2000.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–5009 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM99–2–001; Order No. 2000–A]

Regional Transmission Organizations

Issued February 25, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) reaffirms its basic determinations in Order No. 2000 and clarifies certain terms. Order No. 2000 requires that each public utility that owns, operates, or controls facilities for the transmission of electric energy in interstate commerce make certain filings with respect to forming and participating in an Regional Transmission Organization (RTO). Order No. 2000 also codifies minimum characteristics and functions that a transmission entity must satisfy in order to be considered an RTO. The Commission's goal is to promote efficiency in wholesale electricity markets and to ensure that electricity consumers pay the lowest price possible for reliable service.

EFFECTIVE DATE: Changes to Order No. 2000 made in this order on rehearing will become effective on April 7, 2000.

FOR FURTHER INFORMATION CONTACT:

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I. Introduction

On December 20, 1999, the Commission issued a Final Rule (Order No. 2000) to advance the formation of Regional Transmission Organizations (RTOs).[1] Our objective in promulgating Order No. 2000 was to have all transmission-owning entities in the Nation, including non-public utility entities, place their transmission facilities under the control of appropriate RTOs in a timely manner.

In Order No. 2000, the Commission concluded that regional institutions could address the operational and reliability issues confronting the industry, and eliminate undue discrimination in transmission services that can occur when the operation of the transmission system remains in the control of a vertically integrated utility.

[1] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (2000).

Furthermore, we found that appropriate regional transmission institutions could: (1) improve efficiencies in transmission grid management; (2) improve grid reliability; (3) remove remaining opportunities for discriminatory transmission practices; (4) improve market performance; and (5) facilitate lighter handed regulation. We stated our belief that appropriate RTOs can successfully address the existing impediments to efficient grid operation and competition and can consequently benefit consumers through lower electricity rates and a wider choice of services and service providers. In addition, substantial cost savings are likely to result from the formation of RTOs.

Order No. 2000 established minimum characteristics and functions that an RTO must satisfy in the following areas:

Minimum Characteristics:

1. Independence
2. Scope and Regional Configuration
3. Operational Authority
4. Short-term Reliability

Minimum Functions:

1. Tariff Administration and Design
2. Congestion Management
3. Parallel Path Flow
4. Ancillary Services
5. OASIS and Total Transmission Capability (TTC) and Available Transmission Capability (ATC)
6. Market Monitoring
7. Planning and Expansion
8. Interregional Coordination

In the Final Rule, we noted that the characteristics and functions could be satisfied by different organizational forms, such as ISOs, transcos, combinations of the two, or even new organizational forms not yet discussed in the industry or proposed to the Commission. Likewise, the Commission did not propose a ''cookie cutter'' organizational format for regional transmission institutions or the establishment of fixed or specific regional boundaries under section 202(a) of the Federal Power Act (FPA).

We also established an ''open architecture'' policy regarding RTOs, whereby all RTO proposals must allow the RTO and its members the flexibility to improve their organizations in the future in terms of structure, operations, market support and geographic scope to meet market needs.

In addition, the Commission provided guidance on flexible transmission ratemaking that may be proposed by RTOs, including ratemaking treatments that address congestion pricing and performance-based regulation. The Commission stated that it would consider, on a case-by-case basis, innovative rates that may be appropriate for transmission facilities under RTO control.

Furthermore, to facilitate RTO formation in all regions of the Nation, the Final Rule outlined a collaborative process to take place in the Spring of 2000. Under this process, we expect that public utilities and non-public utilities, in coordination with state officials, Commission staff, and all affected interest groups, will actively work toward the voluntary development of RTOs.

Lastly, under Order No. 2000, all public utilities that own, operate or control interstate transmission facilities must file with the Commission by October 15, 2000 (or January 15, 2001 [2]) a proposal to participate in an RTO with the minimum characteristics and functions to be operational by December 15, 2001, or, alternatively, a description of efforts to participate in an RTO, any existing obstacles to RTO participation, and any plans to work toward RTO participation. That filing must explain the extent to which the transmission entity in which it proposes to participate meets the minimum characteristics and functions for an RTO, and either propose to modify the existing institution to the extent necessary to become an RTO, or explain the efforts, obstacles and plans with respect to conforming to these characteristics and functions.

II. Summary

Thirty-eight petitioners filed requests for rehearing and/or clarification of Order No. 2000.[3] These entities raise a variety of issues, including legal, policy and technical arguments. We respond herein to the arguments made to us in the requests for rehearing and clarification. To the extent not specifically addressed herein, the requests are denied.

Many of the parties requesting rehearing or clarification of Order No. 2000 express their agreement with the majority of the rule. Indeed, most petitions are relatively short in length and focus on only a few discrete issues, indicating that most parties are generally comfortable with the remaining substance of the Final Rule. We attribute this to the unprecedented outreach effort that the Commission undertook before and during the rulemaking process. Because we expect similar significant results from the post-rule collaborative process which we are initiating with our first regional workshop in Cincinnati on March 1, 2000, the Commission concluded that it was important to issue this order on rehearing before that date. Our order on rehearing focuses on the discrete issues that were raised on rehearing. However, the extensive background for this rulemaking and a comprehensive discussion of our goals and principles can be found in Order No. 2000.

On rehearing, we reaffirm the core elements and basic framework of Order No. 2000. However, we have provided clarification with respect to a number of issues, including concerns raised about our requirement that the RTO must have exclusive and independent authority under section 205 of the FPA to propose rates, terms and conditions of transmission service provided over the facilities it operates. While we have maintained the requirement without modification, we have carefully and comprehensively addressed the concerns that were raised and provided further clarification.

We have amended the regulatory text in three areas. First, we have revised the definition of market participant in section 35.34(b)(2) to remove specific references to entities that provide transmission service to an RTO. Second, we have added section 35.34(j)(1)(iv) to codify the requirement for audits with respect to the independence characteristic. Third, we have revised section 35.34(d)(4) to require RTO proposals to include an explanation of efforts made to include cooperatively-owned entities, in addition to public power entities, in the proposed RTO.

III. Discussion

A. Commission's Approach to RTO Formation

1. Voluntary Approach

In the Final Rule, the Commission adopted as a matter of policy a voluntary approach to RTO formation. In other words, Order No. 2000 does not mandate RTO participation. We concluded that a voluntary approach, with guidance and encouragement from the Commission, was the most appropriate to achieving RTO formation at this time.[4]

[2] A public utility that is a member of an existing transmission entity that has been approved by the Commission as in conformance with the eleven ISO principles set forth in Order No. 888 must make a filing no later than January 15, 2001.

[3] The requesters and abbreviations for them as used herein, are listed in an appendix to this order. PECO's request was filed one day beyond the thirty days allowed for rehearing requests, so we will consider its request to be for clarification. We note that TransConnect, Inc. filed a motion to intervene on January 27, 2000 raising no issues that warrant discussion herein.

[4] FERC Stats. & Regs. ¶ 31,089 at 31,033–34.

Rehearing Requests

The Pennsylvania Commission argues that RTO membership must be mandatory for all participants in the wholesale market and should be a condition of participating in the competitive market. It claims that failing to mandate participation undercuts the coordination of generation additions. It states that the Commission clearly perceived the problems, but stopped short of the solution.

TDU Systems asserts that the Commission did not give adequate consideration to the advantages of mandatory RTO participation and the disadvantages of the voluntary approach. It cites the potential costs associated with the innovative rates discussed in the Final Rule, and asserts that the Commission should perform a fuller evaluation of the potential costs and benefits associated with each approach.

TAPS argues that the Commission erred by relying on voluntary action for RTO formation rather than exercising its statutory authority to mandate RTOs. It states that the Commission violated its statutory obligations to remedy undue discrimination. It believes that past experience and common sense demonstrate that voluntary action, coupled with incentives, does not work.

CFA argues that the resistance of the vertically integrated incumbent network owners will be so vigorous that the voluntary approach will fail to solve the problem, and urges the Commission to mandate participation in RTOs.

In addition to the arguments in favor of a direct mandate, TDU Systems, TAPS, CFA, and Industrial Consumers argue that the Commission must generically condition the granting of all market-based rate authorizations and merger authorizations on participation in an RTO. CFA states, for example, that without participation in an RTO, allowing mergers or market-based rates is not in the public interest.

Commission Conclusion

We deny rehearing with respect to our adoption of a voluntary approach to RTO formation. We agree with those advocating a mandatory approach that the objective is to have all transmission-owning entities place their transmission facilities under the control of RTOs in a timely manner, and we stated this in the Final Rule.[5] There are, however, different possible means of attaining that objective. The Commission has made a judgment that the most efficient and effective means is one that involves establishing clear standards, removing obstacles, and fostering cooperation and creativity, rather than one that imposes strict mandates that could polarize parties and generate resistance. That we have not chosen to mandate RTO participation does not mean that we have avoided our obligations to address the impediments to competition that we identified; it merely means that we have chosen a method to address those impediments that we believe will efficiently achieve the result we desire.

We explained in the Final Rule that the voluntary approach as we structured it will allow the industry the opportunity and the flexibility to develop mutually agreeable regional arrangements, and will permit the industry to focus its efforts on the potential benefits of RTO formation rather than on a non-productive challenge to our legal authority to mandate RTO participation.[6] We also stated a number of reasons why we believe this voluntary approach will be successful: the pace of restructuring is accelerating, industry participants are recognizing the strategic benefits of focusing on one segment of the utility business, the Final Rule provides clear guidance on what is necessary to form RTOs, the Commission is facilitating a collaborative process, and certain favorable ratemaking treatments are offered to at least eliminate economic disincentives to RTO formation.[7]

Contrary to TDU Systems' assertion, the Commission gave careful consideration to the advantages and disadvantages of the voluntary and mandatory approaches. Specifically, TDU Systems faults the Commission for not quantifying the impact of the favorable ratemaking treatments that are offered, which, allegedly, would not be required under a mandatory approach. We do not believe it is appropriate to think of the innovative ratemaking treatments discussed in the Final Rule as a cost of the voluntary approach. As discussed in the Final Rule, the innovative ratemaking treatments are intended, among other things, to eliminate disincentives to the efficient use and expansion of regional transmission grids, and to allow transmission-owning utilities to capture some of the benefits of more efficient system operation.[8] We are requiring as a part of any proposal for innovative ratemaking treatments that the applicant demonstrate how the proposal would help achieve the goals of RTOs, to submit a cost-benefit analysis including rate impacts, and to demonstrate that the rate is just, reasonable and non-discriminatory.[9]

In response to those who argue that the Commission should state generically that all market-based rates and mergers must be conditioned on RTO participation, we continue to believe that this is best addressed on a case-by-case basis. We see no need to decide at this time that no merger or market-based rate proposal could satisfy our applicable standards without RTO participation. There will be sufficient opportunity to consider this in the context of individual cases.

2. Legal Authority

The Commission discussed in the Final Rule its legal authority with respect to RTO formation. We concluded that we possessed both general and specific authorities to advance voluntary RTO formation, and concluded that we possessed the authority to order RTO participation on a case-by-case basis if necessary to remedy undue discrimination or anticompetitive effects where supported by the record.[10] We discussed our authority and responsibility under sections 202(a), 203, 205, and 206 of the FPA.[11]

Rehearing Requests

TAPS argues that the Commission violated its statutory obligation to remedy undue discrimination by relying upon a voluntary, as opposed to mandatory, approach to RTO participation. CCEM argues that the Commission committed legal error by not adopting CCEM's proposal—operational unbundling of vertically integrated utilities that places all uses of the transmission system under the same tariff—as a remedy for undue discrimination. CCEM asserts that the Commission must provide a reasoned explanation why simply encouraging jurisdictional transmission owners to join RTOs is an effective remedy for undue discrimination.

Duke argues that the Commission should not make findings that it possesses the legal authority to mandate RTO participation on a case-by-case basis, and asks for rehearing of this conclusion, or, alternatively, requests clarification that no party will be deemed to have waived its right to challenge this conclusion in an individual proceeding. Similarly, EEI and Puget Sound ask for clarification that a public utility retains the right to

[5] *See id.* at 31,033.

[6] *Id.*

[7] *Id.* at 31,034.

[8] *Id.* at 31,171–73, 31,191–92.

[9] FERC Stats. & Regs. ¶ 31,089 at 31,196.

[10] *Id.* at 31,043.

[11] *See id.* at 31,043–46.

challenge the Commission's legal authority should the Commission seek to impose a requirement for RTO participation in the future. If the Commission does not so clarify, they seek rehearing.

ISO Participants argue that the Commission erred in finding that the formation of an RTO that involves transfer of operational control without a transfer of ownership is a transaction that requires approval under section 203 of the FPA. They assert that the assignment of operational responsibilities to an ISO, by itself, is not a disposition of facilities within the meaning of section 203.

Commission Conclusion

We found in the Final Rule that continuing opportunities for undue discrimination exist in the electric transmission industry and that they may not be remedied adequately by functional unbundling.[12] TAPS and CCEM believe that this finding requires a remedy different from the voluntary approach to RTO formation adopted in the Final Rule. TAPS asserts the remedy must be an RTO mandate, and CCEM asserts the remedy must be a total unbundling of transmission, including, apparently, retail unbundling. We do not agree that either of these remedies is required by law. While it is true that the Commission has a legal obligation to remedy undue discrimination it finds,[13] the Commission retains discretion as to what remedy to pursue.

As we said in the Final Rule, we believe that the use of RTOs throughout the country, with the required independence from market participants, can reduce opportunities for unduly discriminatory conduct.[14] The Commission has taken a large step in Order No. 2000 to encourage and advance the formation of RTOs. As discussed above with respect to the Commission's voluntary approach, the fact that the approach is not mandatory does not undermine the ultimate objective of widespread RTO formation. We believe that the approach we have taken is a measured and appropriate response at this time to the lingering discrimination concerns that have been raised.[15]

In response to those asking clarification of our conclusion in the Final Rule that the Commission possesses the authority to order RTO participation on a case-by-case basis to remedy undue discrimination or anticompetitive effects where supported by the record,[16] we note that this is a statement of our remedial authorities. It is well established that the Commission's discretion is at its zenith when fashioning remedies for undue discrimination.[17] The Commission is given substantial deference with respect to such remedies as long as they are reasonably tailored to meet the Commission's goals.[18] It is our view that, pursuant to sections 206 and 309 of the FPA, the Commission could order a public utility to participate in an RTO upon finding that the public utility was engaging in unjust, unreasonable, unduly discriminatory or anticompetitive practices, and that participation in an RTO was a reasonable remedy for that unlawful behavior. If we were to impose such a remedy in a particular case, any aggrieved party would have the right to challenge the lawfulness and reasonableness of that remedy to the extent permitted by law.

ISO Participants' argument that the Commission erred in its discussion of section 203 of the FPA is misplaced. Although they do not specify the particular language in the order that they object to, they apparently refer to our statement that ''public utilities'' transfers of control of jurisdictional transmission facilities to entities such as RTOs would require section 203 approval.'' [19] ISO Participants argue that a public utility's assignment of limited operating responsibilities to an ISO, while retaining physical control and ownership, is not a disposition within the meaning of section 203. The language in Order No. 2000 was a general summary statement of how the Commission has interpreted section 203 in its case precedent. Indeed, the Commission has invoked its section 203 authority over the transfers of control of transmission facilities for all five of the ISOs that have been approved thus far. Thus, our statement in Order No. 2000 was not intended as a new, changed, or amplified interpretation. Those questioning whether specific fact situations invoke our jurisdiction have appropriate avenues, such as requests for declaratory order, to have those questions resolved.

B. Minimum Characteristics of an RTO

1. Independence

In the Final Rule, we discussed how to ensure that an RTO would be able to operate independently from market participants. We defined who was a market participant.[20] We also discussed the extent to which ownership of a transmission company by market participants would be permitted. We stated that a truly passive form of ownership would be acceptable,[21] but that active ownership by market participants would be limited.[22] Another aspect of independence discussed in Order No. 2000 was how to ensure that the RTO could have independence with respect to its tariff. In response to comments on the NOPR, we clarified that the transmission owners retained rights to make section 205 filings to establish their revenue requirements for payments from the RTO, but that otherwise the RTO must have the authority to file any changes to its transmission tariff.[23]

a. Definition of Market Participant

We discuss below several distinct categories of rehearing requests with respect to our definition of market participant.

Rehearing Requests

Several requests for rehearing argue against our inclusion in the definition of market participant entities that provide transmission or ancillary services to the RTO. With respect to the inclusion of entities that provide transmission services, EEI, Independent Companies, Southern Company, United Illuminating and Conectiv are concerned that this could preclude the development of transcos and other for-profit RTOs. For example, Conectiv argues that the definition is circular when applied to RTOs that both own transmission facilities and provide transmission service. Conectiv requests the Commission clarify that the definition of market participant does not include transcos and other for-profit RTOs. Southern Company states that in the situation where an independent transmission company is an RTO, some might argue that the transmission company is providing transmission services to the RTO and would thus be a market participant. Southern Company also argues that an

[12] *Id.* at 31,015, 31,043.

[13] *See, e.g.,* Southern California Edison Company, 40 FERC ¶ 61,371 at 62,151–52 (1987), *order on reh'g*, 50 FERC ¶ 61,275 at 61,873 (1990), *modified sub nom.*, Cities of Anaheim v. FERC, 941 F.2d 1234 (D.C. Cir. 1991); Delmarva Power and Light Company, 24 FERC ¶ 61,199 at 61,466, *order on reh'g*, 24 FERC ¶ 61,380 (1983).

[14] FERC Stats. & Regs. ¶ 31,089 at 31,024.

[15] *See id.* at 31,028.

[16] *Id.* at 31,043.

[17] *See* Order 888, FERC Stats. & Regs. ¶ 31,036 at 31,676 (1996); Niagara Mohawk Power Corp. v. FPC, 379 F.2d 153, 159 (D.C. Cir. 1967); Tapoco, Inc., *et al.*, 39 FERC ¶ 61,363 at 62,169 (1987).

[18] Tenneco Gas Co. v. FERC, 969 F.2d 1187, 1198, 1201 (D.C. Cir. 1992).

[19] FERC Stats. & Regs. ¶ 31,089 at 31,045.

[20] FERC Stats. & Regs. ¶ 31,089 at 31,061–63.

[21] *Id.* at 31,064–68.

[22] *Id.* at 31,068–73.

[23] *Id.* at 31,075–76.

independent transmission company should not be a market participant where it participates in a larger RTO with other transmission owners and might be considered to be providing transmission services to the RTO.

EEI requests that the Commission clarify that an RTO is not a market participant with respect to transmission services it provides within the RTO's boundaries, and that an independent transco should not be deemed a market participant where it joins with others to form a larger RTO. Independent Companies ask the Commission to clarify that the market participant definition was not intended to include a transmission owner that is making its transmission facilities available through an RTO in which it holds active ownership and is not otherwise engaged in electric generation or marketing activities.

United Illuminating asserts that pure transmission owners do not have the incentive or ability to favor their power marketing activities, and they do not participate in the energy or ancillary services markets. United Illuminating also states that there appears to be no reason to include in the definition of market participant a transmission owner that provides transmission service to an RTO, because that service would be provided according to the protections of a regulated tariff. United Illuminating also claims that the part of the market participant definition that includes any entity whose economic or commercial interests that would be significantly affected by the RTO's actions or decisions would automatically preclude a transco as an RTO. United Illuminating asks that we confirm that pure transmission owners are not market participants.

Commission Conclusion

We will grant rehearing in part, and clarification, with respect to the definition of market participant. As noted in the Final Rule, we use the definition of market participant as a reference point for establishing limits on ownership (*i.e.,* an RTO's ownership of market participants and market participants' ownership of an RTO) and standards for independent decisionmaking or governance, when governance arrangements are being relied upon to ensure independence. With respect to the inclusion in the definition of any entity that ''provides transmission * * * services to the Regional Transmission Organization,'' [24] there is some confusion in what we intended. We did not intend that a ''pure transmission company'' [25] that qualified to *be* an RTO would be thought to be providing transmission services *to* the RTO within our definition of market participant. Additional issues may arise as to the fairness of an RTO's governance, however, where a pure transmission company is only one of several entities providing transmission services to or making transmission facilities available to the RTO. We now realize that our attempt to address these additional issues through the definition of market participant has caused unnecessary confusion. Accordingly, we will revise the definition of market participant at § 35.34(b)(2)(i) to delete specific references to entities that provide transmission services to the RTO.

While we are revising section 35.34(b)(2)(i) to drop specific references to entities that provide transmission services to the RTO in the definition of market participant, the involvement of a pure transmission company in RTO decisionmaking processes may be relevant to our independence criterion, and we cannot conclude that such involvement would never be problematic. For example, in the ISO context, we have set out the general principle that decisionmaking processes should be independent of any market participant or class of participants. The fact that a pure transmission company is no longer included in the definition of market participant does not mean that the governance of an ISO would be unaffected by the voting rights attributed to pure transmission companies (or, indeed, pure distribution companies who are also not included in the definition of market participants). Accordingly, we emphasize that our revision to the definition of market participant is not intended to prejudge the issues or considerations that may be raised with respect to governance arrangements involving, in part, pure transmission companies.

We note that pursuant to section 35.34(b)(2)(ii), the Commission can find on a case-by-case basis that an entity that has economic or commercial interests that would be significantly affected by the RTO is a market participant. As we stated in the Final Rule with respect to power buyers and with respect to pure distribution entities, there may be circumstances where a transmission entity that obtained a controlling interest in an RTO could manipulate access and curtailment decisions, or planning and expansion decisions, in a way that would advantage itself and disadvantage other users.[26] We can and will deal with those potential situations on a case-by-case basis.

United Illuminating makes the point that a pure transmission company that either is an RTO, or is part of an RTO, would likely have economic or commercial interests that would be significantly affected by the RTO's actions or decisions, thus making it fall within the definition of market participant under section 35.34(b)(2)(ii). We clarify that pure transmission companies will not be within the scope of section 35.34(b)(2)(ii) solely because of their ownership of transmission facilities.

Rehearing Requests

Several requests for rehearing also ask for clarification and/or rehearing with respect to the inclusion in the definition of market participant of entities that provide ancillary services to the RTO. EEI argues that there is a conflict between requiring the RTO to be the provider of last resort of ancillary services and including ancillary service providers in the definition of market participant. EEI states that this is a problem not only with RTOs that are transcos, but also where an ISO requires a transmission-owning member to provide ancillary services. EEI also asserts that the definition will interfere with an RTO's ability to run or administer an energy market. Independent Companies assert that the definition of market participant appropriately includes those entities providing generation-related ancillary services to the RTO, but should not be interpreted to include a transmission owner's provision of scheduling and dispatch services to the RTO.

Southern Company argues that an independent transmission company may find it beneficial to own limited amounts of generation to operate an effective and efficient transmission system, and that it should be allowed to own such ''non-competitive'' generation without being considered a market participant.

Commission Conclusion

With respect to the part of the market participant definition that encompasses an entity that provides ancillary services to the RTO, we offer a clarification. Order No. 2000 requires under Function 4 that an RTO serve as a provider of last resort of all ancillary services required by Order No. 888 and subsequent

[24] Section 35.34(b)(2)(i).

[25] We use the term ''pure transmission company'' to refer to a transmission company that owns transmission facilities but has no interests in or affiliation with sellers or brokers of electric energy.

[26] FERC Stats. & Regs. ¶ 31,089 at 31,062–63.

orders. As the provider of last resort for ancillary services, the RTO must ensure that adequate arrangements are in place for the provision of ancillary services to transmission customers. We recognize that there are many different ways that ancillary services can be made available, *e.g.* through contractual arrangements and market mechanisms. We did not intend that an RTO that was fulfilling its obligation to be a provider of last resort of ancillary services would be considered to be providing ancillary services to the RTO. Rather, that obligation is to provide ancillary services to the transmission customers. Accordingly, we clarify that an RTO that provides ancillary services within its region pursuant to its obligation under Function 4 will not itself be considered to be within the definition of market participant because of its performance of that function.

In addition, we clarify that our concern with the provision of ancillary services to the RTO is focused on generation-related ancillary services. Our concern, as we stated it in Order No. 2000, is that the RTO will likely have considerable discretion in defining the types and quantities of ancillary services needed and how they will be procured, and we did not want the suppliers of ancillary services to be able to influence the RTO's decisions on these issues.[27] We continue to believe this is a valid concern and will not delete this component of the market participant definition with respect to any generation-related ancillary service. However, we clarify that a pure transmission company that performs the ''Scheduling, System Control and Dispatch Service'' as described in Order No. 888 will not be considered to be within the section 35.34(b)(2)(i) definition of market participant because it performs that service.

In response to Southern Company's request that we allow independent transcos to own ''non-competitive'' generation that ''essentially'' provides a transmission function, we note that the definition of market participant is not framed in terms of generation ownership, but includes entities that sell or broker electric energy, or that provide ancillary services to the RTO. Any entity that sells or brokers electric energy, directly or through an affiliate, is a market participant. Also, as just discussed, any entity that provides generation-related ancillary services to the RTO or its customers is also a market participant.

[27] *Id.* at 31,062–63.

Rehearing Requests

TDU Systems objects to the Commission's statement in Order No. 2000 that retail suppliers of last resort may request to be excluded from the definition of market participant. TDU Systems argues that this should not be encouraged, because suppliers of last resort can retain substantial market share for a substantial period of time even if it does not overtly compete for retail sales business, and the pendency of waiver petitions at this time could be a source of disruption and confusion.

Commission Conclusion

We did not intend to encourage such requests for waivers, but at the same time, we feel compelled to recognize the possible situation where a distribution company may desire to exit the sales business and become a pure distribution company, but cannot due to an obligation to be the supplier of last resort under a state retail access program. We concluded that these entities would be within the definition of market participant, unless they could show us special factors as to why they should not (*e.g.* its sole electric sales are to satisfy a state requirement and it does not compete for retail load).[28] Certainly, any seller of electric energy will carry a substantial burden to prove to us that it should not be considered to be a market participant. We expect that this will apply to a relatively narrow class, and we should not be overwhelmed by waiver requests. Accordingly, we will not accept TDU Systems' request that we withdraw our statements in the Final Rule.

b. Ownership Issues

In the Final Rule, we discussed at some length the requirements we believed were necessary to ensure that ownership interests in RTOs would not jeopardize the independence of RTOs from market participants.[29] We concluded: that truly passive ownership interests by market participants would not be restricted; that active ownership by market participants would have to cease after five years (with an extension possible in certain circumstances); that during the time active ownership is permitted, up to five percent ownership by a single market participant was deemed a safe harbor and 15 percent ownership by a class of market participants was a benchmark; and that there would have to be periodic independent audits conducted to ensure independence.

[28] *Id.* at 31,063.

[29] FERC Stats. & Regs. ¶ 31,089 at 31,064–73.

We discuss below the requests for rehearing and clarification that we received on the issues of our limits on ownership generally, passive ownership, active ownership, and auditing requirements.

Rehearing Requests

Duke objects generally to the Commission's focus on ownership, asserting that the Commission's approach is overly rigid and that the Commission has not examined whether there are less restrictive means to meet the independence criterion. Duke first asks the Commission to reconsider the structure allowed for the natural gas industry, where affiliated production and marketing companies are permitted. Duke does not challenge the Commission's observation that the electric industry evidences a much higher level of vertical integration, but argues that there is no reason to require separation of control of transmission and merchant activities to a greater extent than is permitted in the gas industry. Duke also suggests that the Commission could allow affiliated transcos subject to a requirement that they retain an independent auditor to review the activities and decisions of the affiliated transco from the standpoint of potential discrimination and compliance with codes of conduct and file regular reports of its findings.

Conectiv asks that the Commission clarify that the ownership requirements do not apply to the non-profit ISO form of RTO, but would only apply to transcos and other for-profit entities with voting securities. It asserts that the record does not support ownership restrictions for non-profit RTOs.

Commission Conclusion

We do not agree that the structure currently in place for the gas industry would adequately support independent RTOs. As Duke itself notes, it would allow the senior management of an entity that operates in both the transmission and generation arenas to participate in decisions involving the transmission business. These decisions would, as a matter of course, have a significant effect on that same entity's generation business. We also disagree that independent auditing alone can substitute for the independence requirement. As we noted in the Final Rule, we have found that in the electric industry, it is difficult to monitor compliance with codes of conduct. Moreover, it is a very intrusive form of regulation and ultimately requires us to be ''chasing after conduct.'' As we noted in the Final Rule, this is not the light-

handed regulation that is essential to support emerging competitive markets.

Conectiv's concern, which focuses at times on the distinction between for-profit and not-for-profit entities and at other times on the distinction between the transco and ISO form of RTO, is not entirely clear. We clarify that our concerns about ownership and control of an RTO are not a function of the for-profit or not-for-profit approach. The limits on ownership by market participants apply whenever the RTO intends to own and operate the transmission assets itself, either directly or indirectly through other entities. The fact that a market participant owner of an RTO operated on a non-profit basis would not, for example, preclude the possibility that the RTO could operate to benefit its generation business. Accordingly, ownership restrictions are appropriate in that case.

Rehearing Requests

With respect to passive ownership, NRECA, TDU Systems, and Dairyland argue that passive ownership should be disallowed completely after five years, except in extraordinary circumstances. NRECA, for example, recognizes the desirability of a transition period to phase out passive ownership, but asserts that the maintenance of a passive ownership threatens RTO independence and imposes heavy regulatory burdens on the Commission to police. TDU Systems argue also that passive ownership should be subject to the same benchmark individual and class limits that apply to active ownership.

New Orleans also challenges the allowance of passive ownership by market participants. New Orleans argues that the sale/leaseback cases and the Securities and Exchange Commission Rule cited in Order No. 2000 in support of allowing passive ownership are in fact much narrower than what the Commission is allowing, in that the passive owners there were not primarily in the business of selling electric power. By permitting passive ownership by market participants, New Orleans asserts, the Commission has not provided the safeguards that exist in other passive ownership situations. New Orleans claims that the Commission erred by not limiting passive the same way it limited active ownership. Finally, New Orleans asks that the Commission clarify that where there is clear evidence that an RTO proposal would not be *perceived* as independent by a majority of potentially affected entities, the proposal will be rejected.

Duke argues that if passive ownership restrictions are retained, the definition of passive ownership should not be so narrow as to leave the board and management of the passive owner without the capability to ensure that the transmission assets will be operated responsibly and in accordance with legitimate business objectives. Duke states that if it places its transmission into an affiliated transco, Duke's management should be able to participate in decisions that significantly affect the value of the transmission business, such as mergers, asset divestitures and acquisitions, and the choice of individuals to manage the transmission business.

EEI asks that the Commission clarify what types of passive ownership would be acceptable. Specifically, EEI requests that the Commission clarify that: (1) a fiduciary duty to maximize the value of the RTO's transmission assets will not defeat independence; and (2) passive owners may reserve certain rights to protect themselves against abuse by the holders of voting rights. EEI argues that a fiduciary duty to maximize transmission service revenues is similar to what the Commission has approved in the ISO context, and that there is no duty owed under corporate law that would require an RTO to maximize a passive owner's outside interests. EEI states that a duty to maximize the value of transmission assets will not create a bias toward transmission-only solutions, because of the RTO's obligations with respect to market mechanisms under the planning and congestion management functions. EEI argues further that passive owners should be able to reserve rights to participate in certain limited but major decisions that affect their ownership status, such as mergers and bankruptcy filings.

Commission Conclusion

We deny rehearing of the requests to phase-out or limit passive ownership beyond what we stated in the Final Rule. NRECA is correct that a phase-out of passive ownership, or limits on the percentage interests of passive ownership, would reduce the regulatory burdens of ensuring that the passive ownership arrangement does not threaten the RTO's independence. However, as we noted in the Final Rule, passive ownership arrangements can help resolve some significant impediments to the transition to the type of RTO that would both own and operate the transmission assets.[30] Permitting flexibility on these arrangements could enhance significantly our goal of accelerated formation of RTOs. Limits on passive ownership interests or required phase-outs would not further this goal. We are not convinced that the careful balance we reached on this issue in the Final Rule is in error.

New Orleans' concern that we should guard against passive ownership arrangements where there is clear evidence that an RTO proposal would not be perceived as independent echoes the concerns we expressed in the Final Rule.[31] We explained in the Final Rule that this requires assurances to all market participants that any passive ownership arrangement is truly passive and will not interfere with the independent operation and decisionmaking of the RTO. It is also one of the reasons we said that it was important to require a system of independent compliance auditing to ensure that passive ownership arrangements remain passive over time and to provide assurances to other market participants that the RTO is truly independent. We appreciate New Orleans' concerns that there are differences in the passive ownership arrangements that may be submitted as compared to those we may have evaluated before in the context of sale/leasebacks or those permitted under the SEC rule we referenced in the Final Rule. However, we referenced these only to make the point that there are different ways of structuring passive ownership arrangements and it may be possible to structure them in such a way to demonstrate that they are truly financial arrangements.

Duke's and EEI's concerns about the need of passive owners to protect the value of their assets and investments are valid. However, the Commission must balance these concerns against the need for an independent RTO. We expect that proponents of passive ownership arrangements will explore methods for protecting the value of their assets and investments while also maintaining the true independence of RTO decisionmaking. We recognize that this may require some creativity and innovation to meld the regulatory needs with those of the markets, but it is necessary if we are to ensure independent RTOs and accommodate passive ownership arrangements.[32]

In response to EEI's concerns, we do not expect that a fiduciary responsibility of the RTO to its passive owners to maximize the value of the RTO's

[30] FERC Stats. & Regs. ¶ 31,089 at 31,064.

[31] *Id.* at 31,065.

[32] *See, e.g.,* the statement of investment analyst Steven Fetter, who said, ''The wide spectrum of permissible outcomes should be welcomed by Wall Street. What investment bankers do best is create innovative structures to meet legal and market requirements.'' *FERC's RTO Rule Should Cheer Investors,* www.fitchibca.com (January 13, 2000).

transmission assets would, by itself, be problematic with respect to the RTO's independence.

Rehearing Requests

On the issue of active ownership, Conectiv, CTA, EEI, Southern Company, and Alliance all argue that the Commission was wrong to sunset all active ownership after five years. EEI, representative of the others challenging the sunset requirement, states that it is aware of no other context where a complete ban on active ownership has been imposed to prevent control; that the sunset requirement conflicts with the Commission's finding that five percent active or lower does not raise control concerns; that five years is an arbitrary and capricious transition period; that limits on active ownership would reduce the numbers of bidders for a transco's stock and would limit investment opportunities for market participants; that a complete ban on active would be difficult to monitor since there is no existing requirement to disclose ownership less than five percent; and that the Commission does not have the legal authority to order divestiture of ownership by electric utilities. CTA adds that a five-percent active ownership should be indefinite, because other holders of active interests would prevent a five-percent minority holder from acting in its own interests. CTA states further that the five-year transition is too short and should be extended so as to avoid a ''fire sale'' in the event of an economic slowdown.

TDU Systems argue that the five-percent safe harbor for individual active ownership should be an absolute ceiling, and that the Commission should refuse to permit a market participant to propose a higher level. TDU Systems and NRECA both contend that intervenors should be allowed to challenge whether even a five-percent active ownership is too high. CTA asserts that passive ownership interests held by market participants should not be a factor in whether a market participant would be allowed to hold more than five-percent active ownership. It states that if the Commission is vigilant to assure that passive ownership cannot exercise control, there is no reason why passive ownership should be a factor in determining appropriate active ownership.

With respect to the 15 percent benchmark established in Order No. 2000 for a class of market participants, Conectiv, CTA, Alliance, and EEI argue that there should be no such benchmark. They assert that it is unlikely that class members would collude with their competitors, that there are existing laws to prohibit collusion, and that keeping track of the classes would be administratively difficult. EEI states further that such aggregation of interests is not a factor in any other regulatory context. Contrary to these parties' arguments, TDU Systems argues that a 15 percent benchmark for classes of active owners is too high, and that class ownership should be limited to 10 percent.

Commission Conclusion

We deny rehearing on the active ownership issues and reaffirm our decision that active ownership by market participants will have to cease after five years (with an extension possible in certain circumstances), and that during the time active ownership is permitted, up to five percent ownership by a single market participant will be deemed a safe harbor and 15 percent ownership by a class of market participants will be a benchmark. We carefully considered all of the extensive arguments made in the comments on the NOPR on the active ownership issue, and reached a solution in the Final Rule that we continue to believe appropriately balances the interests of all parties and our policy objective.

Many commenters argue that our willingness to allow active ownership for five years undermines our policy against active ownership after a five-year period. We disagree. Our decision reflects our belief that over the long term independence may be adequately assured only if there are no active ownership interests, but that a transition period during which active ownership in limited amounts may be proposed, together with auditing requirements, is a reasonable interim measure to assist RTO formation. With respect to the 15 percent benchmark for classes of active ownership, we explained fully in the Final Rule what are concerns are,[33] and we are not persuaded that our concerns are invalid. Moreover, we have permitted sufficient flexibility for parties to argue on a case-by-case basis that the 15 percent class benchmark is too high or too low.

Rehearing Requests

With respect to the independence audits required by Order No. 2000, Dynegy argues that the audits should commence immediately at RTO start-up, not be delayed for two years, and should be ongoing. Dynegy states that it has concerns about whether an audit performed two years after start-up is sufficient to guard against ownership abuses. Dynegy asks additionally that the Commission either place the audit and ownership requirements in the regulation or provide clarification as to why they do not appear in the regulations. TAPS expressly endorses the audit requirements as essential.

Commission Conclusion

No party has objected to having independent audit requirements for passive interests, active interests, and ISO governance, and we continue to believe they are essential. In response to Dynegy, it is of course a judgment as to how often to have them and how soon to start them. We note that the Final Rule provides for the first audit two years after our *approval* of the RTO, not after RTO start-up. We believe we have struck an appropriate balance among the goals of having a sufficient check on independence, allowing time for some initial operational shake-out, and not imposing overly burdensome procedures. We agree with Dynegy that it would be useful to state the auditing requirements in the text of the regulations, and we have therefore added a new sub-paragraph (iv) to section 35.34(j)(1) for this purpose. The new regulatory text we added reads as follows:

(iv)(A) The Regional Transmission Organization must provide:

(*1*) With respect to any Regional Transmission Organization in which market participants have an ownership interest, a compliance audit of the independence of the Regional Transmission Organization's decision making process under paragraph (j)(1)(ii) of this section, to be performed two years after approval of the Regional Transmission Organization, and every three years thereafter, unless otherwise provided by the Commission.

(*2*) With respect to any Regional Transmission Organization in which market participants have a role in the Regional Transmission Organization's decision making process but do not have an ownership interest, a compliance audit of the independence of the Regional Transmission Organization's decision making process under paragraph (j)(1)(ii) of this section, to be performed two years after its approval as a Regional Transmission Organization.

(B) The compliance audits under paragraph (j)(1)(iv)(A) of this section must be performed by auditors who are not affiliated with the Regional Transmission Organization or transmission facility owners that are members of the Regional Transmission Organization.

We also note that we stated in Order No. 2000 that applicants have a continuing obligation to inform the

[33] FERC Stats. & Regs. ¶ 31,089 at 31,072.

Commission of any changed circumstances regarding ownership.[34]

c. Section 205 Filing Rights

In the Final Rule, we attempted to balance our desire to ensure that the RTO have exclusive and independent authority over changes to its transmission tariff with the FPA section 205 rights of public utility transmission owners to seek rate changes.[35] We affirmed that RTOs, in order to ensure their independence from market participants, must have the independent and exclusive right to make section 205 filings that apply to the rates, terms, and conditions of transmission services over the facilities operated by the RTO. However, we also clarified that the transmission-owning public utilities whose facilities are used by the RTO have the right to make section 205 filings to establish their revenue requirement and the level of payments for use of their facilities. We also stated that we would also entertain other approaches as long as they ensured the independent authority of the RTO and the ability of transmission owners to protect the level of the revenue needed to recover the costs of their facilities.

Rehearing Requests

A number of parties requested rehearing or clarification challenging our division of section 205 filing rights between the RTO and transmission-owning members of the RTO.[36] For example, EEI reflects most of the rehearing requests on this issue in arguing that the division violates the transmission owners' section 205 rights. EEI claims that it will jeopardize cost recovery for the transmission owners because it breaks the link between establishing the revenue requirement and establishing rate design, and it further breaks the link between the party responsible for establishing the revenue requirement and the party responsible for recovering it. EEI argues that the RTO might not have the same incentive to design rates to recover costs as the transmission owner would, and that the division is inconsistent with court and Commission precedent. EEI states that this division will discourage the voluntary participation in RTOs, and is in fact inconsistent with at least some of the ISOs approved to date.

Alliance contends that the Commission erred in determining that the RTO must have exclusive authority to propose changes in rates. In addition to similar arguments that EEI made about this unlawfully depriving public utilities of section 205 rights and increasing the risks for transmission owners, Alliance argues that it is a false premise that the RTO needs exclusive authority over rates. It states that Commission oversight of rates will provide a complete check on the ability of transmission owners to implement rate changes that would place them at a competitive advantage *vis-a-vis* other market participants.

Conectiv argues that the division of filing rights is inconsistent with the law (and could result in an unconstitutional taking of property), that the Commission has provided insufficient factual basis in the record to support its assertion that RTOs must have the authority to file rate changes in order to ensure independence from market participants, and that it does not provide sound economic and transmission policy. Conectiv states that a disinterested RTO might not make decisions based on the revenue recovery needs of the transmission owner, and that non-profit RTOs do not have incentives to file innovative rate design proposals to protect and encourage transmission investment. ISO Participants also assert that the division of authority is inconsistent with the Commission's endorsement of innovative rates.

Midwest ISO Participants ask the Commission to clarify that it need not modify its Commission-approved ISO documents on the issue of section 205 filing rights in order to qualify as an RTO. They state that the Midwest ISO Agreement carefully delineated the rights of the ISO and transmission owners, with the owners controlling the pricing structure and revenue distribution methodology. They assert that this was a critical element of the ISO Agreement, and the Commission explicitly stated in its order that it would honor the transmission owner's rights during the six-year transition period after start-up. Midwest ISO Participants contend that Order No. 2000's requirement that the RTO make section 205 filings to recover costs from transmission customers is at odds with the Midwest ISO owners' rights to control filings to change the ISO's rates. They claim further that Order No. 2000's division of authority makes no sense in the context of the Midwest ISO's tariff, which contains a rate formula. They request that the Commission make clear that the owners can continue to control the rate formula.

PECO asks for clarification of how the proposed division of filing authority would apply to situations like the PJM tariff, which is a combined ISO and transmission owner tariff. They claim that Order No. 2000 would effectively bar the PJM transmission owners from making changes to the tariff sheets that contain their individual revenue requirements. They ask the Commission to clarify that in such a case the transmission owners can still make section 205 filings to propose a change to the tariff pages that cover their revenue requirements. PECO also asks the Commission to clarify that any section 205 filing by an ISO type of RTO would be subject to the established ISO governance process.

SRP asks the Commission to clarify that its discussion of section 205 filing rights was not intended to broaden the applicability of section 205 to non-jurisdictional public power entities, and to clarify the ability of such non-jurisdictional entities to set the level of their revenue requirements. SRP wants the Commission to clarify that it intends to allow flexibility for non-jurisdictional entities to be able to set their revenue requirements through means other than making section 205 filings, which would mean in SRP's case, that its independent board could continue to set its revenue requirement.

Commission Conclusion

The Commission will deny rehearing of its decision that an RTO, in order to ensure its independence, must have the independent and exclusive right to make section 205 filings with respect to the transmission services the RTO provides to third parties. As discussed below, we reject arguments that this decision is inconsistent with law and precedent. However, in light of the concerns and misunderstandings raised, we also will further clarify our requirement.

As noted in Order No. 2000, and as evidenced by the comments of the parties seeking rehearing, unique issues arise with respect to tariff filing rights in the situation where the RTO operates and provides transmission service over transmission facilities owned by another entity, *e.g.*, in the context of an ISO. There are two legitimate concerns here that need to be balanced. One is the concern that for the RTO to provide transmission service independent from market participants, it must have independent control over its tariff, and not have a tariff that is subject to the control of particular participants in the RTO. The other concern is that of transmission owners who will turn the operation of their transmission facilities over to the RTO and need some assurance that they will continue to receive a fair return on their transmission investments. We

[34] *Id.* at 31,067, 31,072.

[35] *See id.* at 31,075–76.

[36] Conectiv, Duke, Southern Company, EEI, ISO Participants, United Illuminating, Transmission Owners of NY, AEP, PECO and Alliance.

reconciled those concerns in the Final Rule by stating that in the ISO type of situation, the RTO had to have the independent and exclusive right to make section 205 filings that apply to the rates, terms, and conditions of transmission services over the facilities operated by the RTO, but that transmission owners have the right to make section 205 filings to determine the appropriate payments for the RTO's use of their facilities.

As an initial matter, some parties question whether, to ensure independence, it is necessary for the RTO to have exclusive and independent authority with respect to filing changes to its tariff. We find the need to be clear. The tariff establishes the rates, terms, and conditions under which the RTO will provide transmission service to transmission customers. If the RTO does not have the independent right to seek appropriate changes to its tariff, it is difficult to see how that RTO could be viewed as providing a transmission service that is independent from market participants.

All of the objections to the division of authority we adopted in the Final Rule are based on the false premise that we are restricting the rights of transmission owners to protect their transmission investments and therefore jeopardizing their asserted right to recover their legitimate costs. This is not the case. Under our formulation, transmission owners may make section 205 filings at any time to establish their revenue requirements and the just and reasonable payments they may charge the RTO for use of their facilities. This gives them the full opportunity to recover their cost of service.

Those requesting rehearing, however, insist that transmission owners will be at risk for not recovering their allowed payments from the RTO, because the RTO either will not have an appropriate rate design or will not have the incentive to collect revenues from transmission customers sufficient to cover the payments to transmission owners. These arguments have no merit. There is nothing in the Final Rule that precludes transmission owners from seeking to assure recovery of their allowed payments from the RTO through appropriate mechanisms in the agreement establishing the RTO. For example, they may provide for a contractually enforceable obligation for the RTO to pay the owners their full revenue requirement as determined by the Commission, and they may even provide for some sort of true-up mechanism if an RTO fails to recover the costs it owes to the owners in a particular period.

In addition, nothing in the Final Rule precludes the transmission owners from participating in the RTO's designing of rates to transmission customers, as long as they are not given veto authority over, or otherwise control, what the RTO ultimately seeks to file under section 205. The Commission did not intend to preclude transmission owners from being involved in rate design proposals prior to the RTO filing them. If, in designing rules to establish a new RTO (or to justify rules of an existing ISO for which an RTO determination is sought), parties can establish an approach or process for involving the transmission owners in advance in the determination of the rate design proposals that the RTO will file, and can demonstrate that the approach or process does not compromise the independence of the RTO, the Commission will be open to such proposals.[37]

In addition, when the RTO proposes a rate design to recover the costs the RTO owes to the transmission owners as well as other costs that the RTO may incur, the Commission will exercise its responsibilities to approve a rate that is designed to recover all RTO costs, including the cost of payments that the RTO must make to the transmission owners. Transmission owners will be able to participate in that proceeding and to make whatever arguments they wish regarding appropriate rate design and the effect on their recovery of costs.

Most of the parties asserting legal challenges on this issue, including EEI, spend considerable effort reciting the basic rate changing mechanisms of section 205 of the FPA, and claim an inalienable right of a transmission owner to make rate changes even in the situation in which they no longer control the transmission facilities and are no longer the parties providing service over the facilities. They claim they are owed a ''guarantee'' of recovering the costs of the facilities which have been turned over to the RTO.

We reject the legal arguments made by those on rehearing. The Commission's holding in Order No. 2000 did nothing contrary to the fundamental tenets of section 205 of the FPA and nothing inconsistent with the rights of utilities to have the opportunity (as opposed to a ''guarantee'') to recover costs associated with facilities used to provide jurisdictional service. What the rehearing petitioners ignore, and what the Commission pointed out in Order No. 2000, is that in the context of an ISO, both the transmission owners and the RTO are public utilities under the FPA with respect to the same facilities. Further, it is the RTO, and *not* the transmission owners, that in this context is the provider (seller) of jurisdictional service. Because the RTO is providing the jurisdictional service, it is clearly within the parameters of section 205 for the RTO to have on file a rate schedule for the services it provides, and that it have the exclusive authority to propose changes to that rate schedule.[38]

Given that it deprives no public utility of the opportunity to recover its costs and earn a fair return on its investments, the section 205 filing procedure adopted in Order No. 2000 is well within the Commission's authority. The Supreme Court has stated that the Commission ''must be free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests.'' [39] That is what we have done here.

Several existing ISOs seek in their rehearings to have the Commission make specific findings with respect to their current division of section 205 filing rights. We do not believe it is appropriate to make such findings in this generic proceeding and instead will do so when those entities make their filings under this rule. We note that we stated in the Final Rule that we would entertain other approaches to the division of filing authority ''as long as they ensure the independent authority of the RTO to seek changes in rates, terms or conditions of transmission service and the ability of transmission owners to protect the level of the revenue needed to recover the costs of their transmission facilities.'' [40]

In response to SRP's request for clarification of the applicability of our finding to non-public utilities, we clarify that our discussion of filing rights pertained to public utilities under section 205 of the FPA and that it was not intended to broaden the applicability of section 205 to non-public utilities.

[37] In this situation, parties may also consider providing for mutually agreeable rules regarding the timing of the revenue requirement and rate design filings.

[38] This is analogous to the situation in which there is a sale and leaseback of public utility property for financing purposes. In such a case, it is the lessee operator, not the owner, that files tariffs.

[39] Permian Basin Area Rate Cases, 390 U.S. 747, 767 (1967). The Supreme Court in this case also rejected the notion that there is an unrestricted right to file rate changes under section 4(d) of the Natural Gas Act, which is parallel to section 205(d) of the FPA. *Id.* at 779–80.

[40] FERC Stats. & Regs. ¶ 31,089 at 31,076.

In response to arguments that the Commission's decision will discourage the voluntary formation of RTOs or will result in favoring transcos over ISOs, the intent of this rule is to be neutral as to corporate form. As we stated above, we have left sufficient flexibility for transmission owners to protect their revenues, obligations to shareholders, and ability to attract capital whether they form an ISO, transco, or other form of institution.

Some parties have argued that our decision undermines the incentive to use performance based rates in the ISO context because it takes the development of such mechanisms out of the hands of the transmission owners. We do not think this is a necessary result. As we noted in the Final Rule, when activities that contribute to performance are shared between the RTO and the transmission owners, the RTO design may ensure that the rewards and penalties associated with activities performed by transmission owners flow through to the owners to achieve the desired result.[41]

2. Scope and Regional Configuration

Order No. 2000 set forth as the second minimum characteristic of an RTO that the RTO must serve a region of sufficient scope and configuration to permit it to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.

Rehearing Requests

The Pennsylvania Commission asks that the Commission ensure that RTOs are large enough to support an open and transparent market in reactive power and other ancillary services. It states that RTO applicants should be able to demonstrate that the geographic area and diversity of ownership of generation and transmission facilities is sufficient to support such a market.

Commission Conclusion

We agree with the Pennsylvania Commission that one of the considerations in evaluating scope and regional configuration is whether the RTO can support open and transparent markets, including ancillary service markets.

3. Short-Term Reliability

The Final Rule required as the fourth minimum characteristic of an RTO that the RTO have exclusive authority for maintaining the short-term reliability of the grid. As part of this characteristic, the Commission stated that the RTO must have exclusive authority for receiving, confirming, and implementing interchange schedules; must have the right to order redispatch of generation for reliability purposes; must have authority to approve transmission maintenance schedules; and must report to us if any reliability standards it operates under hinder it from providing reliable, non-discriminatory and efficiently priced transmission service. We did not require that the RTO have authority over generation maintenance schedules or that the RTO be required to establish transmission facility ratings. We also stated that on the issue of the extent of RTO liability relating to its reliability activities, we would address that on a case-by-case basis.[42]

Rehearing Requests

Dynegy and TAPS are concerned with the information received by control area operators who are market participants when they are directed to implement interchange schedules by the RTO. Dynegy agrees with the protections provided in the rule for separation of reliability personnel and wholesale merchant personnel, but asks the Commission to clarify that it will actively monitor compliance and enforce appropriate penalties for violations. TAPS objects to limiting the shield from sensitive interchange information to the control operator's wholesale merchant personnel. It states that this would allow for a market participant control area operator to share with its retail merchant function to take improper advantage of the commercially sensitive information. It asks that the Commission make clear that such information must be kept from all personnel involved with making purchases on the wholesale market, whether on behalf of wholesale or bundled retail customers.

Dynegy asks that the Commission clarify that to the extent a generator is redispatched by an RTO, it will be fully compensated for the redispatch order, which may include lost opportunity costs. Metropolitan asks that the Commission clarify that if an RTO reschedules or cancels planned transmission maintenance, the compensation will be limited to direct costs, and will not include indirect costs such as opportunity costs, because they are too speculative.

TAPS argues that certain functions that Order No. 2000 does not require the RTO to have for reliability purposes in fact should be required. TAPS contends that the RTO should be required to have a greater voice in transmission facility ratings in order to have control over ATC and TTC calculations. TAPS also contends that the RTO should have, at least for reliability reasons, control over generation maintenance schedules.

Duke calls the Commission's decision to decide liability responsibility on a case-by-case basis arbitrary and capricious. It states that transmission owners cannot be expected to transfer control of their facilities to what could be a non-profit RTO with limited assets without resolving the issue of the RTO's liability for its errors. Duke asks that the Commission clarify that it will not permit RTO operations to begin without a final resolution of liability issues, and that the RTO would not be given unilateral authority to alter the liability provisions of its tariff.

Commission Conclusion

We agree with Dynegy that it may be necessary to monitor and enforce compliance with the requirement for separation of reliability and merchant personnel. We expect that any RTO proposal would address this issue and propose appropriate and specific procedures concerning monitoring and enforcing compliance with all RTO rules, including these.

We share TAPS concerns that, when the retail merchant function is purchasing wholesale power, it is participating in the wholesale market and should not be privy to commercially sensitive information that would give it a competitive advantage over other purchasers of wholesale power. We expect that any RTO proposal will reflect these concerns to the extent it involves a control area operator affiliated with a market participant who could obtain access to commercially sensitive information.

We agree with Dynegy that generators that are redispatched by an RTO should be fully compensated and that the compensation would consider, among other things, lost opportunity costs. We also agree with Metropolitan that, when the RTO reschedules or cancels planned transmission maintenance, compensation to the transmission owners would be limited to the actual, verifiable out-of-pocket transmission-related costs incurred (*e.g.,* additional labor costs caused by the rescheduling).

In the Final Rule, we explained why we believe it is appropriate not to require, as an initial matter, that the RTO have authority over equipment ratings and generation maintenance schedules. While we expect that some RTO proposals may initially exceed our requirements or may evolve over time to place greater responsibility with the

[41] *Id.* at 31,184.

[42] FERC Stats. & Regs. ¶ 31,089 at 31,103–05.

RTO, we will not impose the additional requirements proposed by TAPS.

We continue to believe that liability issues should be addressed on a case-by-case basis. We agree with Duke that it is important that issues concerning liability and how liability provisions can or cannot be changed over time should be addressed during the collaboration process and resolved before the RTO begins operation. In this regard, a public utility can seek a declaratory order or make an RTO filing and have the liability issues resolved before the commencement of operations.

C. Minimum Functions of an RTO

1. Tariff Administration and Design

In the Final Rule, we adopted the requirement that the RTO must be the sole provider of transmission services and the sole administrator of its open access tariff.[43] Included in this function is the requirement that the RTO have the sole authority for the evaluation and approval of all requests for transmission service including requests for new interconnections.

Rehearing Requests

Duke and EEI request clarification that the requirement that the RTO be the sole provider of all transmission service is not intended to require unbundling of non-jurisdictional transmission service. Duke argues that given the Commission's lack of jurisdiction over bundled retail transmission, the Commission has no power to indirectly require the unbundling of retail energy sales through a rulemaking. Duke proposes the following change to section 35.34(k)(1)(i): ''The Regional Transmission Organization must have the sole authority to receive, evaluate, and approve or deny all requests for *wholesale* transmission service.''

Dynegy also seeks clarification from the Commission as to the requirement that the RTO be the provider of transmission service. Dynegy requests guidance as to the level of flexibility contemplated by the Commission for this requirement in situations where an umbrella RTO-transco structure is adopted. Dynegy envisions a paradigm where an interconnection-wide entity determines and/or arbitrates questions of system capacity and acts a scheduler, but the RTO actually owns and maintains the facilities and performs the dispatch. Under this scenario, Dynegy points out that depending on the perspective, either entity can be the provider of transmission service. In addition, SoCal Edison requests clarification that a two-tariff model (*e.g.,* RTO/ISO tariff and transmission owner tariff), whereby transmission owners continue to sell transmission service that is provided by an RTO, is an acceptable option for RTOs.

In addition, a number of entities requested rehearing or clarification on an RTO's authority over interconnections to the grid. For example, Metropolitan and SoCal Edison request that the Commission modify Order No. 2000 to clarify that an RTO has no interconnection authority over transmission facilities it does not own or have operational control of. Metropolitan is concerned that some systems within an RTO region that are not under the operational control of the RTO are already subject to arrangements with adjoining control areas and transmission owners. In addition, Metropolitan notes that public power systems may not be able to resolve legal or tax concerns in order to permit their facilities to be controlled by an RTO.

SoCal Edison also argues that the Commission erred to the extent it provided RTOs sole authority to approve requests for interconnections. SoCal Edison notes that FERC, not RTOs, has the authority to approve and evaluate interconnections, pursuant to sections 202(a) and 210 of the FPA. SoCal Edison asserts that transmission owners must remain an integral part of the interconnection process. According to SoCal Edison, the text of the Final Rule should be amended as follows: ''The Regional Transmission Organization must have the authority to *establish interconnection policies and to coordinate the interconnection process* for new interconnections.''

EPSA asserts that the Commission failed to expound upon the role of RTOs *vis-a-vis* other transmission owners in facilitating new interconnections. According to EPSA, in order to ensure non-discriminatory interconnection processes for all generators, the Commission should establish the RTO as the lead agency for new interconnections, with individual transmission owners' roles limited to performing studies on behalf of the RTO. EPSA contends that the RTO must be capable, within a reasonable time frame, of performing the necessary transmission studies and analyses that are required with respect to requests for new interconnections. EPSA also argues that new generators should not be required to commit to a particular level or type of transmission service in order to obtain interconnection service. In addition, EPSA proposes the development of a standardized interconnection agreement that would hasten the development of new generation and streamline the interconnection process. EPSA argues that this application process for evaluating interconnection requests and for processing the requests must be applied in a consistent and non-discriminatory manner.

Dynegy supports the positions set forth by EPSA in its request for rehearing on this issue. Dynegy urges the Commission to require, at a minimum, that any RTO proposal clearly address the nature and scope of the RTO's responsibility for the interconnection of new generators to the transmission grid, and clarify that new generators will not be required to negotiate separately with both the RTO and individual transmission owners.

Finally, EEI requests that the Commission clarify that any RTO authority over new interconnections does not interfere with the right to recovery of costs of new interconnections under section 205 of the FPA.

Commission Conclusion

We will not revise section 35.34(k)(1)(i) as proposed by Duke to limit it to wholesale transmission service. The proposed revision would disable the RTO from performing those retail transmission services that are already included in our *pro forma* tariff, *i.e.,* unbundled retail transmission that may occur, voluntarily or as the result of state action, on the system of the historical bundled retail supplier, or unbundled retail transmission service provided by other transmission providers that constitute more remote segments of a multi-system transmission transaction.

However, we clarify that the Final Rule is not intended to require the unbundling of non-jurisdictional transmission service (*i.e.,* the transmission component of bundled retail sales of energy). That is, the requirement does not interfere in any way with whether retail open access and retail choice are provided, or with the pricing of retail bundled power sales which is a decision for appropriate state authorities. However, the requirement *is* intended to require that the RTO control all transmission facilities in the region. This is consistent with what the Commission has done with respect to ISOs in the past. As Duke notes, the Commission has addressed in the context of existing ISOs, issues surrounding the fact that a transmission owner's assets continue to be used to provide bundled retail power sales. For example, in *PJM,* the Commission noted that, when transmission owners engaged

[43] *See* FERC Stats. & Regs. ¶ 31,089 at 31,108.

in transactions under the PJM Tariff to meet retail load, they would be, at the same time, using their transmission system to make bundled retail sales and using the transmission system of the other transmission owners, *e.g.,* to import power to their system for the purpose of making bundled retail sales.[44] We note that, to date, according to one analysis,[45] approximately 40 percent of the nation's electricity sales to ultimate customers utilize transmission systems that are participating or have agreed to participate in Commission-approved ISOs without implicating the continuing jurisdiction of state commissions over bundled retail power sales. In short, we have accommodated ISOs that provide service at wholesale as well as at retail, and in states that have retail choice as well as states that do not have retail choice, and we have done so without a conflict between state and Federal authority.

In response to Dynegy's concerns, we do not see any inconsistency in our requirement that the RTO be the provider of transmission service and our flexibility to allow various RTO structures. We believe that some of this concern arises from the meaning of the term ''provider of transmission service.'' When we use the term provider of transmission service in this context, we are referring to the entity (*i.e.,* the RTO) that has the primary obligation to ensure that transmission service is provided, not the entity that may be operating the switches at the direction of the RTO.

In response to SoCal Edison's request for a clarification on the ''two-tariff'' model, it would be inappropriate to consider in the Final Rule the specifics of whether a particular aspect of an existing ISO arrangement would satisfy the RTO requirements. We emphasize, however, that we have created a Final Rule that provides clear guidance as to the RTO requirements and extensive flexibility in how to satisfy those requirements.

The concerns raised by Metropolitan and SoCal Edison with respect to an RTO's authority over interconnections to the grid have two facets. First, some facilities may not be under the control of the RTO because they are owned by an entity that has not placed any facilities under the control of the RTO, *e.g.,* a public power entity. We agree that the RTO would not have authority over interconnections to that portion of the grid. Second, some facilities may not be under the control of the RTO even though they are owned by an entity that has placed other facilities under the control of the RTO. For example, in the NEPOOL region, only Pool Transmission Facilities (PTF) were placed under the control of ISO–NE. However, ISO–NE nonetheless has authority over interconnections to non-PTF transmission facilities. We would expect similar arrangements to be part of any RTO proposal.

We disagree with SoCal Edison's point that RTOs can exercise no authority over interconnections because that authority resides only with the Commission under sections 202 and 210 of the FPA. An interconnection obligation is an element of transmission service and is already required to be provided under our *pro forma* tariff that will be administered by the RTO.[46] As EPSA notes, this is true, whether the interconnection request is tendered concurrently with a request for transmission service or in advance of a request for a specific transmission service.[47] It is therefore appropriate for the RTO to be the entity that reviews and approves interconnection requests. However, we agree with SoCal Edison that transmission owners must remain an integral part of the interconnection process. We also agree with Dynegy that new generators should not have to negotiate separately with the RTO and individual transmission owners. We expect one-stop shopping under any RTO.[48] Finally, we agree with EEI that the RTO's authority over new interconnections does not suggest that entities incurring costs to provide those interconnections will not be compensated.

2. Congestion Management

In the Final Rule, the Commission concluded that an RTO must ensure the development and operation of market mechanisms to manage congestion.[49] The market mechanisms must provide transmission customers with efficient price signals regarding the consequences of transmission use decisions. We asserted that these pricing proposals should ensure that (1) the generators dispatched in the presence of transmission constraints are those that can serve system loads at least cost and (2) limited transmission capacity is used by market participants that value that use most highly. The Final Rule did not prescribe a specific congestion pricing mechanism; instead, RTOs have considerable flexibility to propose a congestion pricing method that is best suited to their circumstances.

Rehearing Requests

Dynegy argues that because congestion management is a ''hot'' topic, the Commission should hold a technical conference on issues surrounding congestion management and RTOs.

TDU Systems requests clarification that the Commission has not mandated or approved the auction of limited transmission capacity to the highest bidder in all circumstances. TDU Systems asks whether the market participant who can pay the most for the capacity is necessarily the one who will maximize the overall societal benefits of obtaining it and whether the entity that can afford to pay the most on that day is the supplier who can pay the going rate specifically because it has decided to avoid serving loads of poorer residential consumers. TDU Systems state that, while they do not expect the Commission to have immediate answers to these questions, they urge the Commission to make clear that the subject remains open for discussion. TDU Systems contends that, otherwise, unfettered reliance on market mechanisms in transmission pricing may become a recipe for new forms of undue discrimination.

Commission Conclusion

We deny Dynegy's request, as part of this rehearing order, to direct a technical conference on congestion management issues. We agree that congestion management issues may be significant and controversial and expect that parties will use the collaboration process to tackle these issues.

As requested by TDU Systems, we confirm that Order No. 2000 does not mandate or pre-approve any particular form of market mechanism for congestion management. Furthermore, we agree that congestion pricing must satisfy the same standards as any other rate, term or condition of service, *i.e.,* just, reasonable, and not unduly discriminatory or preferential. We encourage that parties use the collaborative process to identify their concerns about congestion pricing.

3. Ancillary Services

In the Final Rule, the Commission concluded that an RTO must serve as the provider of last resort of all ancillary services required by Order No. 888 and

[44] Pennsylvania-New Jersey-Maryland Interconnection, L.L.C., 81 FERC ¶ 61,257 at 62,281–82 (1997).

[45] *See* Initial Comments of Edison Electric Institute on the RTO NOPR, at Appendix B.

[46] PJM Interconnection, L.L.C., 87 FERC ¶ 61,299 (1999), *reh'g denied,* 89 FERC ¶ 61,186 (1999).

[47] *See* Ameren Operating Companies, 89 FERC ¶ 61,041 (1999), *order on reh'g,* 89 FERC ¶ 61,208 (1999); Central Hudson Gas & Electric Corporation, *et al.,* 88 FERC ¶ 61,138 (1999).

[48] *See id.;* New England Power Pool, *et al.,* 87 FERC ¶ 61,043 (1999).

[49] FERC Stats. & Regs. ¶ 31,089 at 31,126.

subsequent orders.[50] The Commission also allowed RTOs to propose other ancillary services in recognition of local or regional conditions. Moreover, the Commission concluded that real-time balancing markets are essential for the development of competitive power markets and an RTO must ensure that its transmission customers have access to a real-time balancing market that is developed and operated by either the RTO itself or another entity that is not affiliated with any market participant.

Rehearing Requests

Steel Dynamics requests rehearing of the Commission's decision not to establish standard definitions for energy imbalance services, and requests a determination that an hourly assessment of such imbalances is the proper standard for FERC-approved ancillary services. In the alternative, Steel Dynamics requests that the Commission establish a generic proceeding to provide guidance on the development of real-time energy imbalance markets and energy imbalance services.

On rehearing, TDU Systems argues that backup and hour-to-hour load following service should be added to the mandatory ancillary services menu. In the alternative, TDU Systems requests that the Commission: (1) Clarify that proposals to augment the Order No. 888 menu of ancillary services offerings are appropriate subjects for negotiation during the collaborative process; (2) clarify that the Commission will entertain proposals by market participants as well as RTOs to augment the menu of RTO ancillary services, whatever the outcome of the regional process; and (3) clarify that additional ancillary services may be proposed on bases other than local or regional conditions.

Duke seeks clarification that in the discussion of balancing the Commission was not referring to inadvertent interchange. Duke notes that inadvertent interchange is the integration of all of the mismatches within a control area over a time period, typically a single hour, while energy and generation imbalances are the integration of a particular transmission customer's load mismatches for any particular scheduled transmission.

EEI requests that the Commission provide congruence in the deadlines for the deployment of both congestion management and real-time balancing markets, a year after an RTO commences initial operation. EEI argues that real-time information is needed to operate a real-time balancing market and this information requires investment and installation of metering equipment. In addition, EEI notes that operating a real-time balancing market encompasses full coordination across interconnections.

Commission Conclusion

We deny the request to establish a generic proceeding to provide guidance on the development of real-time energy imbalance markets and energy imbalance services. We agree with Steel Dynamics that these issues may be significant and controversial and expect parties to use the collaboration process to address these issues.

We also decline to mandate additional ancillary services as part of this Final Rule, but we clarify that proposals for the RTO to offer additional services is an appropriate topic for discussion during the collaborative process. We expect that one of the benefits of RTOs is that they will be responsive to the needs of transmission users and consider additional services beyond those mandated in Order No. 888 for service on an individual system basis. While market participants are free to propose revisions to RTO proposals that are ultimately filed with the Commission, it is preferable that these issues be thoroughly raised and considered during the collaborative process.

We clarify that the RTO's responsibility for operating a balancing market is intended to address the energy and generation imbalances that are associated with customers' transactions. However, we did express our concern that transmission users had unequal access to balancing options depending on whether they also operate a control area. We recognize that inadvertent interchange among control areas is intended to address different operational matters, but there is some concern among industry participants that control area operators have the ability to use inadvertent interchange as a low cost source of energy imbalance service.[51]

We are not persuaded by EEI that we should extend the deadline for real-time balancing markets. We understand that such markets may require technological support and investment in metering equipment, but we believe that these issues can be resolved within the current deadline.

4. OASIS and Total Transmission Capability (TTC) and Available Transmission Capability (ATC)

The Final Rule provides that the RTO must independently calculate ATC and TTC values based on data developed partially or totally by the RTO. When data are supplied by others, the Final Rule stated that the RTO must create a system of checks and tests to ensure unbiased data and coordination. Also, the Commission concluded that issues relating to capacity benefit margin (CBM) were outside the scope of this proceeding and we noted that CBM issues can be addressed in Docket No. EL99–46–000.

Rehearing Requests

Conectiv requests clarification that a non-profit ISO, which is an RTO, shall accept equipment ratings and other verifiable transmission data from member transmission owners to be used in the calculation of ATC and TTC values. Conectiv is concerned that an RTO may deny the use of verifiable data such as equipment ratings and impose its own different standard. According to Conectiv, the non-use of transmission owners' verifiable data, such as equipment ratings by an RTO, may influence transmission investment and levels of reliability on the transmission owners' systems.

TAPS argues that the Commission should clarify that RTOs have the authority to independently review, verify and modify CBM in setting ATC and TTC with the RTO's CBM values controlling pending ADR. TAPS asserts that CBM is a key component that goes into the computation of ATC and failure to include CBM within RTO authority will make RTO authority over ATC meaningless.

Commission Conclusion

In the Final Rule, we concluded that the RTO should calculate ATC/TTC values based on data developed partially or totally by the RTO. In addition, the Commission required that RTOs independently verify data supplied by transmission owners for the calculation of ATC/TTC. Accordingly, we agree with Conectiv that an RTO can rely on data provided by the transmission owner provided that the data is verifiable by the RTO.

In response to TAPS, we recognize that CBM is an important component in calculating ATC. However, as noted in the Final Rule, issues relating to CBM are too detailed to be addressed at this time and should be addressed when RTO proposals are filed. We agree that these issues need to be resolved because

[50] *See* FERC Stats. & Regs. ¶ 31,089 at 31,140.

[51] We note that NERC is currently evaluating issues related to inadvertent interchange practices and the economic incentives of operating a control area as a source of low cost balancing options. *See* Report to Board of Trustees (Feb. 7–8, 2000).

the RTO cannot accurately compute ATC without also resolving CBM issues.

5. Market Monitoring

In the Final Rule, the Commission concluded that market monitoring is an important tool for ensuring that markets within RTOs do not result in transactions or operations that are unduly discriminatory or preferential or provide opportunity for the exercise of market power. In section 35.34(k)(6) of the regulatory text, we outlined the minimum standards that RTOs' market monitoring plans must satisfy. We also provided latitude to the RTO and market participants to design a market monitoring plan that best fits the circumstances of the RTO and the structure and design of its power markets. In addition, the Final Rule requires than an RTO propose an objective market monitoring plan to assess whether the RTO's involvement in markets favors its own economic interest.[52]

Rehearing Requests

PSE&G reiterates the concerns it raised in its NOPR comments about the need for and extent of a market-monitoring function for RTOs, and asks that it be eliminated as one of the RTO's functions. PSE&G also notes that, while the Final Rule declined to sunset the market monitoring function as PSE&G had proposed, it noted that as bulk power markets evolve and become more competitive, we may revisit the need for the type of monitoring the Rule requires. Pointing to this observation, PSE&G proposes that the Commission at least amend the regulation to allow the market participants the flexibility to evolve to a more competitive state where the intrusion of a market monitor is no longer necessary. To this end, PSE&G proposes the following language to section 35.34(k)(6): ''(iv) The market monitoring plan may provide for its automatic expiration within a fixed period of time, provided that the Commission finds that the markets administered by the RTO are operating competitively without regulatory supervision.''

Conectiv argues that the Commission erred in giving the authority to remedy market power abuses to RTOs. Instead, Conectiv asserts that RTOs should be limited to investigating and reporting market power abuses. Conectiv is concerned that if an RTO is permitted to take an enforcement role in punishing market power abuses, the RTO might create anticompetitive effects in the market by discriminating in punishments. Duke expresses the same concerns as Conectiv and argues that the monitoring arm of RTOs should not be provided policing authority over market participants. Duke contends that an RTO should only be permitted to administer penalties and sanctions to which parties have voluntarily agreed by contract with the RTO.

Dynegy continues to be concerned that RTOs are market participants and therefore, Dynegy requests that the Commission clarify that the market monitoring plans proposed by RTOs must include a plan to assess whether the RTO is able to favor its own interests over those of its customers or members via its involvement in markets in which it participates. Furthermore, Dynegy requests clarification that an objective market monitoring plan to assess an RTO's own involvement must be performed by an independent auditor.

PP&L requests rehearing of the Commission's decision to expand the role of RTO market monitoring to the investigation and determination of individual market participant behavior. PP&L argues that the Commission's responsibility to identify and address the existence and exercise of market power and other anticompetitive activity may not be delegated to private parties such as RTOs. PP&L asserts that the FPA contains no authority for the Commission to delegate to private parties the enforcement of Commission's obligations to prevent discrimination and to regulate the public interest, and furthermore, the delegation of investigatory and regulatory authority to private parties is disfavored under Federal law.

EEI requests that the Commission require that market monitoring plans evolve as market structures evolve and mature. EEI recommends that the Commission reconsider the need for a process through which each RTO and its market participants can regularly assess the scope of market monitoring, the responsibilities of the monitoring unit and the types of data and information that are necessary to effectively monitor.

Commission Conclusion

For the reasons given in the Final Rule, we reject PSE&G's request to eliminate the market monitoring function completely. We also reject PSE&G's proposed modification to the market monitoring requirement. While we agree with PSE&G that the market monitoring function may change over time, it would be premature to assume, as PSE&G proposes, that parties can now predict that, by a date certain, all market monitoring functions should terminate. The Commission will periodically assess the need and degree of market monitoring that should be done by the RTOs. Accordingly, we agree with EEI that an important element of any market monitoring plan may be a process that provides for the periodic evaluation of the plan's design and effectiveness. We believe that this is an issue that should be raised during the collaborative process.

We believe that Conectiv's, Duke's, and PP&L's concerns about enforcement are premature and should be addressed when specific RTO proposals are developed and filed with the Commission.[53] We are not delegating our statutory authority and responsibility; however, we believe RTOs can help us understand and identify market problems. RTOs will be permitted to take actions only within specified parameters that are contained in a Commission-approved tariff.

We provide the clarification requested by Dynegy that the requirement referenced in the Final Rule [54] concerning a monitoring plan to assess the RTO's involvement in markets would be proposed at the same time as the market monitoring plan related to the markets the RTO operates and administers.

6. Planning and Expansion

The Commission concluded that the RTO must have ultimate responsibility for planning, and for directing or arranging, necessary transmission expansions, additions and upgrades within its region that will enable the RTO to provide efficient, reliable and non-discriminatory service. The Final Rule recognized the statutory authority of the states to regulate siting of transmission facilities and we concluded that the RTO's planning and expansion process must be designed to be consistent with state and local responsibilities. In addition, the Commission encouraged the development of multi-state agreements or compacts to review and approve new transmission facilities. Moreover, the Commission recognized that the planning and expansion function may require coordination among multiple parties and regulatory jurisdictions and established a three year deadline for satisfying this function.

Rehearing Requests

TDU Systems agree that transmission planning and expansion is a vital

[52] FERC Stats. & Regs. ¶ 31,089 at 31,064 and 31,156.

[53] *See* New York Independent System Operator, Inc., *et al.,* 89 FERC ¶ 61,196 (1999); New England Power Pool, 85 FERC ¶ 61,379 (1998).

[54] FERC Stats. & Regs. ¶ 31,089 at 31,156.

function for RTOs to perform, and on rehearing, TDU Systems argue that RTOs should be required to be capable of performing its planning and expansion responsibilities on the first day of RTO operation.

NY Transmission Owners seek three clarifications on planning and expansion issues: (1) Clarify that Order No. 2000 does not displace the legal rights of owners of the transmission assets, including the right to propose and build expansions to transmission systems to meet obligations under state law; (2) clarify that the Commission intends to require RTOs to adhere to the statutory requirements under FPA sections 210, 211 and 212 concerning any mandated interconnections or expansions, including statutory provisions respecting cost recovery; and (3) clarify that, if an RTO directs the construction of potentially uneconomic facilities, the transmission owners will not be required to bear the risk of any such facilities.

Duke notes that there may be situations where, regardless of the planning process used, and despite the best efforts of the RTO, transmission expansion cannot be effectuated. For example, Duke states that a state commission could choose not to participate in the multi-state process, or decide not to grant permission to construct. In these situations, Duke asserts that neither the Commission nor the RTO have legal or regulatory authority to compel the state commission to act in a different manner. Therefore, on rehearing, Duke asks that the Commission provide that in a situation in which, despite good-faith efforts by the RTO, certain transmission facilities cannot be built, the RTO consequently is relieved of the responsibility placed on it for directing or arranging necessary transmission additions and upgrades. Likewise, EEI asks that the Commission clarify that any obligation to upgrade or expand transmission is subject to good faith efforts to obtain the necessary approvals under federal, state or local law.

Commission Conclusion

We agree with TDU Systems that transmission planning and expansion are vital functions, but disagree that we can expect RTOs to be capable of performing these functions on the first day of RTO operation.

As we understand it, NY Transmission Owners are concerned on the one hand that they might not be compensated for any expansion that they undertake at the direction of the RTO, and on the other hand, that they might be precluded from expanding their systems on their own initiative without a directive by the RTO. We agree that a transmission owner is entitled to compensation for construction undertaken at the directive of an RTO, and we expect that these issues will be resolved systematically by the RTO. We also clarify that our Final Rule does not preclude a transmission owner from expanding its system on its own initiative; however, it would be prudent for the transmission owner in that case to resolve compensation issues in advance with the RTO.

In response to Duke, we clarify that the transmission expansion obligations are no greater than we established in the *pro forma* tariff.[55] States, of course, retain siting authority. However, among the benefits of an RTO is that expansion will reflect the result of a regional process that can involve regional regulatory authorities, and since the transmission system will be operated regionally, there may be more than one expansion alternative that could resolve the situation. We expect utilities to make good faith efforts to achieve the RTO's desired transmission expansion.

7. Interregional Coordination

In the Final Rule, the Commission added a general interregional coordination requirement as one of the minimum RTO functions.[56] Under this requirement, the RTO must ensure the integration of reliability practices within an interconnection and market interface practices among regions. The Final Rule envisioned some level of standardization and practices, including coordination and sharing of reliability data and data for TTC and ATC calculation, transmission reservation practices and congestion management.

Rehearing Requests

Dynegy requests expedited implementation of the interregional coordination function and proposes the creation of an interregional transmission system coordinator (ITSC) to accomplish the following functions:

(1) Resolving ''physics'' issues over broad geographic regions using flow-based modeling, thereby '' internalizing'' loop flow. This can be accomplished by:

• Expanding use of NERC's interchange distribution calculator (IDC) to determine and verify ATC calculations of existing transmission providers, whether they are individual utilities, ISOs or transcos and to determine and verify transfer capabilities at interfaces.

(2) Serving as a grid operations manager (similar to an air traffic controller).

The interregional transmission system coordinator could:

• Monitor and oversee the grid;
• Act as a seams coordinator;
• Serve as the Security Coordinator;
• Coordinate consistency of operating rules, *e.g.,* schedule deadline for submitting nominations;
• Oversee low-level market monitoring; and
• Enforce ATC and reliability rules

(3) Performing regional reliability functions on behalf of a Self-Regulatory Organization.[57]

Dynegy points out that the ITSC would not impinge on the majority of functions the Commission has assigned RTOs. Instead, Dynegy argues that the ITSC would complement RTOs by ensuring that ATC is calculated in a consistent manner or by ensuring tariffs and protocols do not conflict or cause unwanted market or reliability impacts.

Commission Conclusion

We will deny Dynegy's request for expedited implementation of the interregional coordination function. However, we continue to believe that the coordination of activities among regions is an important element in maintaining a reliable and efficient transmission system. We expect that the parties will use the collaborative process to discuss issues relating to interregional coordination and Dynegy's suggestions.

D. Open Architecture

In the Final Rule, we adopted the principle of open architecture in order that the RTO and its members have the flexibility to improve their organizations in the future. The Commission stated that an RTO must have the flexibility to unilaterally propose changes to its enabling agreements to meet changing market organization and policy needs.[58] We noted, however, that open architecture should not be interpreted to mean the unfettered ability for an RTO to modify its structure or processes. Under the Final Rule, proposed changes to the RTO's jurisdictional rate schedules and contracts will be subject to Commission review and approval under the FPA on a case-by-case basis.

Rehearing Requests

EEI states that transmission owners should have fundamental rights, such as

[55] *See, e.g., pro forma* tariff provisions at sections 15.4, 19.6, 20, and 28.2.

[56] FERC Stats. & Regs. ¶31,089 at 31,166–68.

[57] *See* Dynegy Request for Clarification and Rehearing at 13.

[58] *See* FERC Stats. & Regs.] 31,089 at 31,170.

the right to terminate their participation in the RTO, the right to switch to another RTO, the right to merge RTOs, the right to recover their costs and a return on investment, and the right to protect their assets and employees from damages and injuries. EEI asks the Commission to clarify that these existing rights and obligations are recognizable and enforceable, and that the RTO should not be able to unilaterally abrogate these rights. NY Transmission Owners also request clarification that transmission owners' fundamental rights cannot be altered under the Final Rule's open architecture requirements. NY Transmission Owners are concerned that an RTO may be allowed to change the essential terms of the RTOs enabling agreements under the Final Rule's open architecture policy.

Commission Conclusion

On rehearing, some transmission owners restate their concern that open architecture places them at risk for being bound to an arrangement that is fundamentally different from the one they agreed to join. We believe that this is a legitimate concern that must be addressed in any RTO proposal. In addition, in the Final Rule we agreed that ''the flexibility implied by open architecture should not be interpreted to mean unfettered ability on the part of the RTO to modify its structures or processes.'' [59] Accordingly, any RTO proposals or changes to existing agreements, which will be changes to the RTO's jurisdictional rate schedule(s) and contracts, will be subject to Commission review and approval under the FPA. All changes to an approved RTO will be examined on a case-by-case basis with interested parties having an opportunity to comment on any proposal. Open architecture is aimed at removing barriers to ongoing market improvements and is not intended to allow unilateral changes without a full airing of issues by all affected parties and review by the Commission.

E. Transmission Ratemaking

1. Pancaked Rates

The Final Rule noted that the elimination of pancaked rates within a region is a central goal of our RTO policy.[60] While it is acceptable to assess an access charge to recover capital costs, we stated that transmission customers should not be required to pay multiple access charges for crossing corporate utility boundaries in an RTO region.

Rehearing Requests

EEI contends that the Final Rule provides no analysis of the impact of the elimination of rate pancaking on wheeling rates and revenue. It argues that the policy ignores the impact of loop flows on transmission owners' property rights and infringes on state authority over service territory boundary setting. EEI goes on to suggest that the policy against pancaked rates be modified to allow an RTO to justify that its pancaked rates are just and reasonable.

Commission Conclusion

We deny rehearing of the Final Rule's policy prohibiting pancaked rates. Non-pancaked rates are a central attribute of RTO formation. We have found that pancaking of access charges acts as a major detriment to competition in the bulk power market. We believe that the allowance of transitional use of license plate rates and certain innovative rate provisions of the Final Rule will serve to protect transmission owners' property rights.

2. Uniform Access Charges

The Final Rule recognized that the pancaked rate prohibition can present problems for RTOs whose participants have divergent transmission cost structures.[61] An immediate move to a uniform access charge across the entire RTO could cause disruptive cost shifting among owners. We decided to apply flexibility in the use of license plate rates, echoing our approach in the ISO approvals to date. The Final Rule allowed RTO applicants to propose license plate rates for a fixed term of the applicant's choosing. Under Order No. 2000, license plate rates could be extended beyond the initial period if supported by the facts at that time.

Rehearing Requests

PSE&G complains that the Final Rule's policy on license plate rates is unfair to members of existing ISOs who will have to face uniform rates at a date certain established in the orders approving those ISOs. In light of the Final Rule's policy on license plate rates, PSE&G argues that PJM should be relieved of the requirement to file uniform access rates by July 1, 2002.[62]

TAPS contends that the policy on license plate rates should be amended to include an explicit requirement that all transmission owners be compensated for the use of their facilities.

Commission Conclusion

We deny rehearing of our policy on license plate rates. We shall not address in this rehearing order PSE&G's request that PJM be relieved of its obligation to file a uniform access charge by 2002. PJM's RTO compliance filing will be tendered well before that date and the Commission will consider any proposal to continue license plate rates proposed by the RTO as a whole in the context of the overall RTO proposal.

As to TAPS' request that we modify the Final Rule's license plate policy, we agree with TAPS that all transmission owners should be compensated for the use of their facilities, although we cannot conclude in this rehearing order what types of compensation methods should be used in a particular circumstance. As we stated in the Final Rule, a certain level of detail in ratemaking matters is beyond the Final Rule's scope, including issues such as TAPS' concern, and we will decide these issues on a case-by-case basis.[63]

3. Service to Transmission-Owning Utilities That Do Not Participate in an RTO

In the Final Rule, we stated that where a transmission customer of an RTO or the customer's affiliate owns, controls or operates transmission in the RTO's region, and is not participating in that particular RTO, we intend to permit that RTO to propose rates, terms, and conditions of transmission service that recognize the participatory status of the customer.[64] The Commission concluded that each proposal will be examined on a case-by-case basis. In addition, we noted that some transmission owners may face legal obstacles to RTO participation that need to be taken into account in the proposals.

Rehearing Requests

NRECA argues that the Commission should not unjustly reward RTOs by allowing them to charge higher rates to non-participants where such non-participation results from the RTOs' failure to reasonably accommodate the needs of non-participation during the RTO formation process. NRECA requests that the Commission clarify that proposals to charge individual system rates to a transmission customer who is a non-participant of the RTO may not be made unconditionally and must account for the reasons underlying non-participation. Dairyland also asserts that the Commission must make clear that non-public utilities will not be penalized through the imposition of

[59] FERC Stats. & Regs. ¶31,089 at 31,170.

[60] FERC Stats. & Regs.] 31,089 at 31,174.

[61] *Id.* at 31,177.

[62] *See* Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶61,257 (1997).

[63] FERC Stats. & Regs. ¶31,089 at 31,177.

[64] *See id.* at 31,180.

disadvantageous pricing, terms and conditions for transmission service from an RTO if solutions to the barriers non-public utilities face in joining RTOs cannot be developed through the collaborative process.

Metropolitan, EEI, SMUD and NY Transmission Owners argue that the Commission erred in permitting RTOs to charge individual rates to a transmission customer who is a non-participating transmission owner in the RTO region and that this provision should be deleted. These entities assert that this aspect of the Final Rule violates prohibitions against undue discrimination embodied in the Commission's comparability pricing principles requiring that differences in rates be based on differences in costs incurred to provide service. In addition, EEI asserts that this provision contravenes the Commission's determination to pursue a voluntary approach for RTO formation. South Carolina Authority and TANC/MID also argue that the Commission should grant rehearing and amend the Final Rule to prohibit discriminatory rates for utilities that do not join RTOs. South Carolina Authority asserts that because the Commission lacks the authority to require RTO participation directly, subjecting parties who do not participate in an RTO to less favorable rates, terms and conditions of service would be unlawfully discriminatory. TANC/MID contends that the Commission failed to adequately explain its decision to permit RTOs to propose rates that penalize non-participants.

Commission Conclusion

As we noted in the Final Rule, proposals to charge different rates to non-RTO participants must be demonstrated to be just and reasonable. We agree that such demonstration must account for the reasons underlying non-participation including, among other things, impediments to participation that could not be overcome through the collaborative process. We do not agree with the premise of some of the petitioners who conclude that rate differences of any type constitute undue discrimination. Finally, we disagree that the fact that we will entertain such proposals is inconsistent with our voluntary approach to RTO formation. The Final Rule neither requires nor pre-approves this type of rate treatment. Rather, we simply declined to prohibit these types of rate proposals entirely.

4. Performance-Based Rate Regulation

The Final Rule invited RTO applicants to file voluntary performance-based regulation (PBR) proposals.[65] We provided guidance as to what constitutes a good PBR design in the RTO context. Under Order No. 2000, PBR plans can be filed subsequent to the filing or approval of the RTO proposal. The Commission concluded that proposals for PBR should be fully documented with the necessary information to evaluate costs and benefits.

Rehearing Requests

Industrial Consumers argue that the Commission does not have sufficient basis to abandon traditional cost-of-service principles in favor of PBR. They contend that the Commission may not have met legal requirements to enact such a policy shift. Further, Industrial Consumers complain that the Commission has not inquired sufficiently into the impact of PBR on customers of transmission service.

Commission Conclusion

As we noted in the Final Rule, we are not abandoning the fundamental underpinnings of our traditional transmission pricing policies, *i.e.,* that transmission prices must reflect costs of transmission service.[66] The fact that performance-based pricing mechanisms rely, in part, on benchmarks other than the transmission provider's own costs (*e.g.,* industry performance indices or normative goals) does not constitute a departure from cost-of-service principles. Moreover, we have not in the Final Rule approved any specific PBR. Any entity proposing a PBR mechanism would have to include in its request, as required by section 35.34(e)(1), explanations of how the rate would help achieve the goals of RTOs, including efficient use of and investment in the transmission system and reliability benefits to consumers; a cost-benefit analysis including rate impacts, and why the rate treatment is appropriate for the RTO. The Final Rule also discussed a number of principles relating to PBR design.[67] We will analyze the merits of specific PBR mechanisms when they are proposed.

5. Other RTO Transmission Ratemaking Reforms

a. Levelized Rates

One of the innovative rate options we discussed in the Final Rule is flexibility in the use of levelized rates to recover the cost of transmission assets. Commission policy does not normally allow changes from non-levelized to levelized rates when customer rates are impacted. The Final Rule allowed more flexibility in the use of levelized rates in RTO tariffs.[68] We believed that this flexibility is reasonable because the rates will be offered in a restructured market and will represent a new service in many ways.

Rehearing Requests

Metropolitan, TANC/MID, NRECA and Dairyland argue that the Commission's policy on levelized rates for RTOs will double charge existing transmission customers who have been paying depreciation charges in existing rates. These entities take issue with Order No. 2000's determination that an RTO's transmission tariff would be for a new service to new customers. They claim that many existing customers would be forced to pay twice for the same facility.

EPSA suggests that the double charging of existing customers may be largely avoided by allowing levelized rates only on the net, depreciated plant costs.

TDU Systems argues that the policy in Order No. 2000 on levelized rates is arbitrary and capricious because the need for flexibility does not justify a policy change that would require existing customers to pay twice for the same investment. TDU Systems says that the Commission's policy in *Kentucky Utilities*[69] should be applied to RTO transmission rates.

Commission Conclusion

We deny rehearing of our use of increased flexibility in considering rates based on levelized recovery of capital costs. We disagree that our decision on levelized rates reflects a policy change. Our prior cases dealt with rates charged by a single utility for service over its system. The customers did not change and the service did not change materially over time. Under an RTO, customers will receive service over multiple systems at a single, non-pancaked rate. Different customers will be served by the multiple systems and different services will be provided. This is a material change that warrants appropriate transmission ratemaking reform.

Finally, we do not agree that allowing levelized rates constitutes the payment for the same facilities twice. We reaffirm the explanation for considering levelized rates set out in Order No. 2000.[70] Customers do not buy facilities; they buy service. Moreover, the notion

[65] FERC Stats. & Regs. ¶31,089 at 31,183.

[66] *Id.* at 31,173.

[67] *Id.* at 31,185.

[68] *See id.* at 31,193–94.

[69] 85 FERC ¶61,274 (1998).

[70] FERC Stats. & Regs. ¶31,089 at 31,193–94.

that any RTO customer who paid rates for past services based on the cost of facilities that now comprise a portion of the RTO grid is somehow entitled to RTO rates based on the same ratemaking treatments is not only unjustified, but also unworkable.

Going forward, customers will be paying rates for expanded and more flexible services at rates that, in total, are significantly lower than the rates offered under individual tariffs. Moreover, going forward, levelized rates have the beneficial effect of charging customers the same rates for use of the same system regardless of when they take service. The sweeping reorganization of the transmission grid that will occur as the result of the Commission's RTO initiative and the industry's own movement towards unbundling of the assets themselves is the best time to consider what type of rate treatments, going forward, will best serve the needs of competitive energy markets.

b. Return on Equity

Several of the innovative rate options in the Final Rule involve adjustments to the return on equity allowed in the calculation of transmission rates.[71] These options include: formulary rates, risk adjustments and rates of return that do not vary with changes in the capital structure. We offered these options because they remove some of the disincentives that may accompany joining an RTO, they recognize changes in risk involved in restructuring and they take some account of the changes in the industry that have an impact on owners' risk.

Rehearing Requests

NRECA and TDU Systems ask that the Commission clarify its position on the increased risk that RTOs will be expected to experience. They are concerned that the Commission may have prejudged the issue and determined that RTOs will experience greater risk entitling them to a higher rate of return. They ask the Commission to clarify that the Commission will assess the risk of each RTO based on evidence brought to bear on a case-by-case basis.

Industrial Consumers argue that the Commission cannot assume that participation in an RTO increases risks for transmission owners. On the contrary, they argue that evidence shows that risks involved in RTO participation and divested transmission operation will actually be lower. Industrial Consumers point to findings of the California Public Utilities Commission and commentaries of utility investment analysts to support its proposition. They state further that risks are lower for RTO participants because of the statutory requirement that regulators allow a reasonable rate of return, unbundling will shield transmission owners from prudence reviews on the generation side, and more competitive generation will reduce bypass opportunities.

Commission Conclusion

The Final Rule draws no conclusions about the risks of a transmission-only business. It simply observes that the uncertainty created during the restructuring transition may increase risk. We have not prejudged the risk issue, and that issue will be determined case-by-case.

c. Accelerated Depreciation and Incremental Pricing for New Transmission Investments

The Final Rule recognized that new transmission investment may need innovative rate treatment to make necessary enhancements viable in the RTO context. For that reason, we stated that we would consider proposals to allow accelerated depreciation of new transmission assets and proposals to charge incremental rates for new investment while charging embedded rates for existing investment.[72]

Rehearing Requests

TANC/MID claims that the Commission's willingness to consider accelerated depreciation and incremental pricing for new investment is arbitrary and capricious and is not supported by substantial evidence. It claims that transmission projects are impeded more by siting and environmental concerns than by inadequate financing. TANC/MID also argues that incremental pricing for new investment while applying average pricing for existing facilities violates the Commission's policy against ''and'' pricing.

TDU Systems disagrees with the Commission that accelerated depreciation and incremental pricing are needed for new transmission investment. It finds them unwarranted deviations from established pricing policy. If the Commission adopts such rate policies for RTOs, it should require that any affected new facilities be put out for competitive bid.

Commission Conclusion

With respect to accelerated depreciation for new transmission investment, as with the other innovative rate treatments discussed in the Final Rule, we did not guarantee that it would be allowed in every situation. Rather, we stated that we were willing to provide the flexibility to permit RTOs to propose non-traditional depreciation schedules. All such proposals will be required to be supported by the explanations and analyses set forth in section 35.34(e)(1). We do not believe that our willingness to consider such proposals is arbitrary and capricious.

We disagree that we have departed from our policy against ''and'' pricing. The form of ''and'' pricing that the Commission has prohibited is described in the Transmission Pricing Policy Statement.[73] There we addressed ''and'' pricing at the corporate level, *i.e.,* proposals by individual transmission providers to assess certain customers both an embedded cost rate and an incremental cost rate, while assessing only an embedded cost rate to their own uses of the transmission system. While the pricing proposals we will entertain for RTOs may combine elements of embedded cost rates and incremental cost rates, they do not constitute corporate ''and'' pricing. Indeed, we have already approved these rate forms for most existing ISOs, noting for example, that it is acceptable to charge both a non-pancaked access fee based on embedded costs and an incremental charge reflecting opportunity costs or expansion costs. Significantly, unlike the corporate ''and'' pricing prohibited under our Transmission Pricing Policy Statement, the objective of this pricing proposal is not to make the cost faced by one group of transmission users (*i.e.,* the wholesale customer) higher than another's (*i.e.,* native load). Rather, this type of pricing is intended to (1) reduce the cost of transmission over multiple utility systems in both constrained and unconstrained situations and (2) rely on congestion charges to provide a uniform price signal to all users in constrained situations.

We shall not dictate that an RTO put transmission projects out for competitive bid. As we noted in the Final Rule, the Commission will not mandate any specific approach in how an RTO satisfies the function of planning and expansion.[74]

[71] *Id.* at 31,192–93.

[72] *Id.* at 31,194.

[73] Inquiry Concerning the Commission's Pricing Policy for Transmission Services Public Utilities Under the Federal Power Act, Policy Statement, FERC Stats. & Regs. ¶ 31,005 (1994), *clarified,* 71 FERC ¶ 61,195 (1995).

[74] FERC Stats. & Regs. ¶ 31,089 at 31,165.

d. Other Innovative Rate Issues

Rehearing petitions were filed on other innovative rate issues as described below.

Rehearing Requests

NRECA is concerned that some of the innovative rate proposals discussed in Order No. 2000 may produce rates significantly higher than the rates that would be approved under existing cost-of-service principles. NRECA asks that the Commission clarify that the reasonableness of innovative rates offered by an RTO must be measured against established cost of service principles.

EEI suggests that the innovative ratemaking treatments be extended to all transmission-owning public utilities, even to non-RTOs. TAPS contends that the Commission should require RTOs seeking rate incentives to make them available to entities, other than existing transmission owners, who are willing to invest in transmission.

SoCal Edison requests that the Commission clarify that transmission owners who participate in an ISO type of RTO may file for innovative rate treatments. SoCal Edison states that the language in the Final Rule seems to imply that only an RTO can seek innovative rate treatment. It contends that there is no rationale for precluding transmission owners from seeking innovative rates if the desired rate treatment otherwise comports with Order No. 2000's requirements. Further, it states that the ROE-based innovative rate treatments are more appropriate for the revenue requirement filing that can be made by transmission owners. Therefore, SoCal Edison asks the Commission to clarify that transmission owners as well as RTOs can seek innovative rate treatment.

Commission Conclusion

In response to NRECA, we reaffirm our statement in the Final Rule that the innovative rate treatments we have offered do not depart from cost of service principles, *i.e.,* that transmission prices must reflect the costs of providing the service.[75]

We reject EEI's request to extend the innovative rate treatments to public utilities that do not participate in RTOs. The Final Rule addresses RTOs; the innovative rate treatments discussed in the Final Rule must be justified in terms of how the proposed rate treatment would help achieve RTO goals.[76] It is outside the scope of this rulemaking to address the extent to which such innovative rate treatments could be justified in the absence of RTO benefits.

We agree with SoCal Edison that some of the ROE-based innovative rate treatments relate most directly to the revenue requirement and, in the ISO context, the transmission owner may be responsible for filing the revenue requirement under section 205 of the FPA. A proposed innovative ROE treatment for a transmission owner's revenue requirement can best be evaluated in the context of any other innovative rate treatments proposed for the RTO. In addition, the justification required by section 35.34(e) involves an evaluation of factors related to the RTO as a whole, not only the revenue requirement of an individual owner. The collaborative process provides an important opportunity for the parties to consider the procedures that will apply to the filing of innovative rate treatments.

6. Additional Ratemaking Issues

There were several ratemaking issues not discussed above that were introduced in the Final Rule and addressed in petitions for rehearing. In the Final Rule, we determined that these issues, while important, were at a level of detail that they were better considered in individual RTO proposals.[77]

Rehearing Requests

Duke asks for clarification as to how RTO development and operating costs will be recovered. Duke asserts that such costs can be quite high, and even though the Commission is apparently committed to allowing such reasonable costs in transmission rates, Duke is concerned about what happens if state regulators do not authorize charging such costs to bundled retail transmission customers. Duke seeks clarification that if certain non-jurisdictional customers cannot be charged, the Commission will allow wholesale and unbundled retail customers to bear all the costs.

TAPS suggests that the Commission should require RTOs seeking rate incentives to make them available to other market participants.

SoCal Cities requests that the Commission clarify our description of its position on time-differentiated rates[78] to state: ''Metropolitan and Cal DWR favor the use of time-of-use pricing or off-peak rates for transmission; SoCal Cities oppose any generalized requirement for time-differentiated transmission rates.''

Commission Conclusion

We decline to make any generic rulings, in the abstract, on the recovery of RTO development and operating costs. We do not agree that the benefits of RTOs flow only to wholesale markets. For example, retail suppliers will benefit by access to regional markets at non-pancaked rates under an RTO. However, we are cognizant that there may be limitations on the ability of transmission providers to provide for recovery of these costs from all retail ratepayers in the near-term. We encourage parties to raise these issues during the collaboration process and to involve state regulators and representatives of retail consumers in these discussions. We expect that any RTO proposal will address these matters.

In response to TAPS, there is nothing in our Final Rule that precludes an RTO from involving entities other than existing transmission owners in transmission expansion. Indeed, we expect that the innovative rate treatments we have adopted will provide greater flexibility to RTOs in ensuring timely and efficient expansion.

We accept SoCal Cities' clarification of its position.

7. Filing Procedures for Innovative Rate Proposals

As articulated in the Final Rule, the Commission will evaluate all RTO proposals including any innovative rate treatment based on the applicant's demonstration of how the proposed rate treatment would help achieve the goals of regional transmission organizations, including efficient use of and investment in the transmission system and reliability benefits.[79] We also required that applicants provide a cost-benefit analysis, including rate impacts, and demonstrate that the proposed rate treatment is appropriate for the proposed RTO and that the rate proposal is just, reasonable, and not unduly discriminatory. In addition, the Final Rule stated that pricing proposals involving moratoriums and returns on equity that do not vary according to capital structure may not be included in RTO rates after January 1, 2005.

Rehearing Requests

EEI and SoCal Edison argue that the Commission should eliminate the requirement of a cost-benefit analysis in order to receive innovative rates. These entities note that cost-benefit analyses

[75] *Id.* at 31,173.

[76] *Id.* at 31,172. *See also* section 35.34(e)(1)(i).

[77] FERC Stats. & Regs. ¶ 31,089 at 31,196.

[78] *Id.* at 31,195.

[79] *Id.* at 31,196.

are difficult to perform, speculative in nature, and are likely to result in expensive and time-consuming litigation of competing hypotheticals and models.

Alliance Companies contend that the choice of January 1, 2005 is arbitrary and capricious, and unlikely to accomplish the Commission's goal of encouraging voluntary formation of RTOs. Alliance Companies requests that the Commission eliminate the sunset provision, and permit transmission owner participants in an RTO to address these issues in their RTO applications. Likewise, EEI is concerned with the sunset provision of January 1, 2005. EEI asserts that the Commission should not sunset innovative rate methods, but review them on a case-by-case basis instead.

Commission Conclusion

We shall not eliminate the cost-benefit analysis requirement. Those urging us to consider the transmission rate reforms we adopted in the Final Rule argued that innovative rate treatments would create tangible benefits for electric markets. Moreover, we expect that an evaluation of the impacts of any proposed rate treatment on electric markets would be an integral part of the process that filing parties would undertake before selecting and filing a specific innovative rate treatment.

We disagree that our selection of the sunset date is arbitrary and capricious. As we noted in the Final Rule, the innovative rate treatments which are available for a limited time are appropriate during a transitional period only. The transition period we selected reflects a reasonable balance of the benefits to RTO formation provided by mechanisms such as a rate moratorium and the inability to rely on these mechanisms for an extended period of time.

F. Other Issues

1. Public Power and Cooperatives

The Final Rule concluded that a properly formed RTO should include all transmission owners in a specific region, including municipals, cooperatives, Federal Power Marketing Agencies, Tennessee Valley Authority and other state and local entities.[80] Section 35.34(d)(4) of the regulatory text required that an RTO proposal filed with the Commission include a description of ''efforts made to include public power entities in the proposed Regional Transmission Organization.''

Rehearing Requests

NRECA and Dairyland seek clarification and revision of section 35.34(d)(4) of the regulatory text. These entities assert that the Commission inadvertently failed to include the term ''cooperatives'' in the regulatory text, while the corresponding text of the preamble repeatedly referred to public power entities and cooperatives separately.

East Texas Cooperatives assert that although the Final Rule directs RTOs to include public power and cooperatives in the planning process, it does not require RTOs to allow small transmission owners to place their facilities under the RTO tariff and recover a portion of their annual transmission revenue requirements through the RTO tariff. East Texas Cooperatives argue that it does little good to require RTOs to include cooperatives in the development process if the RTO may refuse to allow the cooperative to place its facilities under the RTO tariff and receive an allocation of revenue.

Commission Conclusion

As requested by NRECA and Dairyland, we clarify that section 35.34(d)(4) should include cooperatives consistent with the text of the preamble. In fact, our intent was for those proposing RTOs to consult with all non-public utility transmission owners in its region. We will revise section 35.34(d)(4) to read as follows, with the addition to the text underlined: ''Any proposal filed under this paragraph (d) must include an explanation of efforts made to include public power entities *and electric power cooperatives* in the proposed Regional Transmission Organization.''

In response to East Texas Cooperatives, the Commission explained in the Final Rule that participation by public power entities and cooperatives is vital to ensure that each RTO is appropriate in size and scope. We continue to expect public power entities and cooperatives to join RTOs and to participate fully in RTO formation and operation.[81] Furthermore, we agree that all transmission owners should be compensated for the use of their facilities, although we cannot conclude in this rehearing order what types of compensation methods should be used in a particular circumstance.

2. Existing Transmission Contracts

In the Final Rule, the Commission concluded it is not appropriate to order generic abrogation of existing transmission contracts at this time.[82] We adopted the measured approach of addressing the issue of existing transmission contracts on an RTO-by-RTO basis and we stated that each RTO can propose whatever contract reform is necessary. The Commission stated that its goal in review of existing transmission contracts is to balance the desire to honor existing contractual arrangements with the need for a uniform approach for transmission pricing and the elimination of pancaked rates.

Rehearing Requests

Metropolitan, PSE&G and TANC/MID request rehearing on this issue. Metropolitan and TANC/MID argue that the Commission failed to provide a reasonable explanation for encouraging RTOs to propose piecemeal abrogation of existing contracts and that this policy is a departure from Order No. 888. PSE&G asserts that the Commission erred in refusing to address treatment of existing contracts on a generic basis and that the Commission should allow existing contracts to remain in effect following the formation of an RTO.

Commission Conclusion

We clarify that Order No. 2000 did not order abrogation of existing transmission contracts. We continue to recognize that existing contracts represent negotiated agreements. However, this issue has arisen in every ISO filing tendered to date, and we intend to address the issue of existing transmission contracts on an RTO-by-RTO basis when it arises again. RTOs may propose whatever contract reform they conclude is necessary to convert from existing contracts to RTO service. The circumstances faced by each region may differ significantly and the likelihood that parties can reach agreement on how to resolve this issue is enhanced if they have the flexibility to design region-specific solutions. As we stated in the Final Rule: ''[O]ur goal in reviewing existing transmission contracts and contract transition plans is to balance the desire to honor existing contractual arrangements with the need for a uniform approach for transmission pricing and the elimination of pancaked rates.'' [83]

[80] FERC Stats. & Regs. ¶ 31,089 at 31,200–02.

[81] While the filing requirements of section 35.34(c) apply only to public utilities, we will permit submittals by non-public utilities if they wish to inform the Commission of their views.

[82] FERC Stats. & Reg. ¶ 31,089 at 31,205.

[83] *Id.*

3. Lighter Handed Regulation

In the Final Rule, the Commission concluded that a properly structured RTO would reduce the need for Commission oversight and scrutiny, which would benefit both the industry and the Commission.[84] We stated that some degree of deference could be granted on certain issues to independent RTOs that have appropriate procedural mechanisms in place to ensure adequate representation of all viewpoints. In the Final Rule, the Commission noted that we cannot delineate the appropriate degree of deference, or on what issues. We believe, however, to the extent an issue can be resolved fairly within a region without Commission involvement, benefits accrue to all parties.

Rehearing Requests

Dynegy argues that the Commission's deference standard has the potential to confer broad unilateral powers on RTOs. Dynegy requests that the Commission: (1) clarify that if a party challenges the bona fides of an alleged consensus, the Commission will independently examine the facts and circumstances to determine if there was a true consensus; and (2) clarify that if an RTO seeks deference on the adoption of a particular rule, the Commission will ensure that the rule is promulgated in advance pursuant to appropriate internal procedures and subject to Commission review.

Commission Conclusion

At the outset, we note that we will continue to apply the level of regulation and scrutiny that is necessary to ensure that public utilities comply with the FPA and our regulations. We confirm that our purpose is not to rely solely on consensus as the basis for accepting RTO provisions. However, we intend to give considerable weight to those aspects of an RTO proposal that result from good faith efforts and an inclusive collaboration process. We encourage all parties to participate in the collaborative process and to consider the diverse interests and needs of the other participants. In this rehearing order, we will not dictate the procedures that RTOs must follow in adopting and promulgating rules. We expect, however, that these procedures will be clearly defined in any RTO proposal that is filed with the Commission.

G. Implementation Issues

1. Filing Requirements

In the Final Rule, the Commission required that all public utilities that own, operate or control interstate transmission facilities (except those already participating in an approved regional transmission entity) file by October 15, 2000, either a proposal to participate in an RTO or an alternative filing describing efforts and plans to participate in an RTO.[85]

Rehearing Requests

NRECA notes that some entities (small utilities as defined by the Small Business Association and entities with only limited and discrete transmission facilities that do not form an integrated transmission grid) have been granted waivers of some of the requirements of Order Nos. 888 and 889. NRECA requests that the Commission clarify that utilities with such waivers also be granted waivers from the filings mandated by section 35.34(c). NRECA argues that the transmission facilities owned by a utility holding waivers from Order Nos. 888 and 889 are not critical to an RTO and that the costs associated with making the section 35.34(c) filing will exceed the benefits.

Commission Conclusion

We deny NRECA's request to waive the filing requirements of section 35.34(c) to entities that have been granted waivers from some of the requirements of Order Nos. 888 and 889. We note that the Final Rule only requires that each public utility that owns, operates or controls transmission facilities participate in one-time filings proposing an RTO or make a filing explaining why they are not participating in an RTO proposal. In any filing explaining why they are not participating in an RTO, we will allow entities that previously have been granted waiver from some or all of the requirements of Order Nos. 888 and 889 to make an abbreviated filing.[86] However, we expect that all utilities, including those transmission-owning utilities that received waivers, will participate in the collaborative process. Moreover, during the collaborative process, we expect those utilities to consider their involvement in an RTO, *e.g.,* to ensure that formation of an RTO is not impaired by the exclusion of their limited transmission facilities.

2. Deadline for RTO Operation

In the Final Rule, the Commission retained the originally proposed startup and other functional implementation deadlines (RTO startup by December 15, 2001, implementation of congestion management by December 15, 2002, and implementation of the parallel path flow coordination and transmission planning and expansion functions by 2004).[87]

Rehearing Requests

Duke is concerned that it will not be able to comply with the time schedule set forth in Order No. 2000 for formation of an RTO without infringing on state jurisdiction over retail electric service. Duke requests clarification that the timetables set forth in Order No. 2000 are merely benchmarks and that Commission will permit public utilities to transition to RTO membership in a manner that is coordinated with state retail service restructuring and unbundling. In addition, EEI argues that the time schedules for RTO implementation are unreasonable and unrealistic given the record of RTO formation to date. EEI requests that the Commission modify the time schedules consistent with the flexibility shown throughout the Final Rule and to reflect a reasonable timetable for the development and implementation of an RTO.

Commission Conclusion

We will deny EEI's request to modify the time schedules adopted in the Final Rule. We will also reject Duke's clarification that the RTO operational deadlines in the Final Rule are merely benchmarks. We continue to believe that the timetable for RTO formation and implementation established in the Final Rule is feasible and realistic. First, we note that all industry participants and the Commission have learned a great deal during the formation of the five ISOs under Commission jurisdiction and this knowledge should facilitate RTO formation. Second, the Final Rule provided flexibility that enables an RTO to satisfy the minimum characteristics and functions in a cost efficient manner. Moreover, we adopted a longer phase-in period for functions that may be difficult to establish, such as congestion management, parallel path flow measures, and transmission planning and expansion. In response to Duke, we stated in the Final Rule that ''an acceptable RTO structure need not be a monolithic organization that requires an extended period of time to become fully set up so that it can

[84] *Id.* at 31,027.

[85] *See id.* at 31,226.

[86] We also clarify that we are not precluding such entities from participating in joint filings with other public utilities or having other public utilities file on their behalf.

[87] *See* FERC Stats. & Regs. ¶31,089 at 31,229.

directly 'push all of the buttons.' '' [88] In sum, we continue to think that the phased startup and other implementation deadlines are reasonable.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act requires rulemakings to either contain a description and analysis of the effect that a proposed or Final Rule will have on small entities or to contain a certification that the rule will not have a significant economic impact on a substantial number of small entities. In Order No. 2000, the Commission certified that the Final Rule would not impose a significant economic impact on a substantial number of small entities. No rehearing requests of Order No. 2000 were filed on this issue and the Commission finds no reason to alter its previous findings on this issue.

V. Public Reporting Burden and Information Collection Statement

Order No. 2000 contained an information collection statement that the Commission submitted to the Office of Management and Budget (OMB).[89] Given that this order on rehearing makes only minor revisions to Order No. 2000, OMB approval for this order will not be necessary. However, the Commission will send a copy of this order to OMB for informational purposes.

The information reporting requirements under this order are unchanged from those contained in Order No. 2000. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, E-mail: mike.miller@ferc.fed.us] or send your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285].

VI. Effective Date and Congressional Notification

Changes to Order No. 2000 made in this order on rehearing will become effective on April 7, 2000.

[88] *See id.* at 31,229.

[89] The OMB control numbers for this collection of information are 1902–0096 and 1902–0082.

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

- CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994. CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.
- RIMS contains images of documents submitted to and issues by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (e-mail to *WebMaster@ferc.fed.us*) of the Public Reference Room at (202) 208–1371 (e-mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18 of the *Code of Federal Regulations,* as follows:

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Part 35 is amended by revising § 35.34 to read as follows:

Subpart F—Procedures and Requirements Regarding Regional Transmission Organizations

§ 35.34 Regional Transmission Organizations.

(a) *Purpose.* This section establishes required characteristics and functions for Regional Transmission Organizations for the purpose of promoting efficiency and reliability in the operation and planning of the electric transmission grid and ensuring non-discrimination in the provision of electric transmission services. This section further directs each public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce to make certain filings with respect to forming and participating in a Regional Transmission Organization.

(b) *Definitions.*

(1) *Regional Transmission Organization* means an entity that satisfies the minimum characteristics set forth in paragraph (j) of this section, performs the functions set forth in paragraph (k) of this section, and accommodates the open architecture condition set forth in paragraph (l) of this section.

(2) *Market participant* means:

(i) Any entity that, either directly or through an affiliate, sells or brokers electric energy, or provides ancillary services to the Regional Transmission Organization, unless the Commission finds that the entity does not have economic or commercial interests that would be significantly affected by the Regional Transmission Organization's actions or decisions; and

(ii) Any other entity that the Commission finds has economic or commercial interests that would be significantly affected by the Regional Transmission Organization's actions or decisions.

(3) *Affiliate* means the definition given in section 2(a)(11) of the Public Utility Holding Company Act (15 U.S.C. 79b(a)(11)).

(4) *Class of market participants* means two or more market participants with common economic or commercial interests.

(c) *General rule.* Except for those public utilities subject to the

requirements of paragraph (h) of this section, every public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of March 6, 2000 must file with the Commission, no later than October 15, 2000, one of the following:

(1) A proposal to participate in a Regional Transmission Organization consisting of one of the types of submittals set forth in paragraph (d) of this section; or

(2) An alternative filing consistent with paragraph (g) of this section.

(d) *Proposal to participate in a Regional Transmission Organization.* For purposes of this section, a proposal to participate in a Regional Transmission Organization means:

(1) Such filings, made individually or jointly with other entities, pursuant to sections 203, 205 and 206 of the Federal Power Act (16 U.S.C. 824b, 824d, and 824e), as are necessary to create a new Regional Transmission Organization;

(2) Such filings, made individually or jointly with other entities, pursuant to sections 203, 205 and 206 of the Federal Power Act (16 U.S.C. 824b, 824d, and 824e), as are necessary to join a Regional Transmission Organization approved by the Commission on or before the date of the filing; or

(3) A petition for declaratory order, filed individually or jointly with other entities, asking whether a proposed transmission entity would qualify as a Regional Transmission Organization and containing at least the following:

(i) A detailed description of the proposed transmission entity, including a description of the organizational and operational structure and the intended participants;

(ii) A discussion of how the transmission entity would satisfy each of the characteristics and functions of a Regional Transmission Organization specified in paragraphs (j), (k)and (l) of this section;

(iii) A detailed description of the Federal Power Act section 205 rates that will be filed for the Regional Transmission Organization; and

(iv) A commitment to make filings pursuant to sections 203, 205 and 206 of the Federal Power Act (16 U.S.C. 824b, 824d, and 824e), as necessary, promptly after the Commission issues an order in response to the petition.

(4) Any proposal filed under this paragraph (d) must include an explanation of efforts made to include public power entities and electric power cooperatives in the proposed Regional Transmission Organization.

(e) *Innovative transmission rate treatments for Regional Transmission Organizations.*

(1) The Commission will consider authorizing any innovative transmission rate treatment, as discussed in this paragraph (e), for an approved Regional Transmission Organization. An applicant's request must include:

(i) A detailed explanation of how any proposed rate treatment would help achieve the goals of Regional Transmission Organizations, including efficient use of and investment in the transmission system and reliability benefits to consumers;

(ii) A cost-benefit analysis, including rate impacts; and

(iii) A detailed explanation of why the proposed rate treatment is appropriate for the Regional Transmission Organization.

The applicant must support any rate proposal under this paragraph (e) as just, reasonable, and not unduly discriminatory or preferential.

(2) For purposes of this paragraph (e), innovative transmission rate treatment means any of the following:

(i) A transmission rate moratorium, which may include proposals based on formerly bundled retail transmission rates;

(ii) Rates of return that:

(A) Are formulary;

(B) Consider risk premiums and account for demonstrated adjustments in risk; or

(C) Do not vary with capital structure;

(iii) Non-traditional depreciation schedules for new transmission investment;

(iv) Transmission rates based on levelized recovery of capital costs;

(v) Transmission rates that combine elements of incremental cost pricing for new transmission facilities with an embedded-cost access fee for existing transmission facilities; or

(vi) Performance-based transmission rates.

(3) A request for performance-based transmission rates under this paragraph (e) may include factors such as:

(i) A method for calculating initial transmission rates (including price caps and any provisions for discounting);

(ii) A mechanism for adjusting initial rates, which may be derived from or based upon external factors or indices or a specific performance measure;

(iii) Time periods for redetermining initial rates; and

(iv) Costs to be excluded from performance-based rates.

(4) An innovative transmission rate treatment or any other rate proposal made for an approved Regional Transmission Organization may be requested as part of any filing that is made under paragraph (d) of this section or in any subsequent rate change proposal under section 205 of the Federal Power Act (16 U.S.C. 824d). Unless otherwise ordered by the Commission, an approved Regional Transmission Organization may not include in rates any innovative transmission rate treatment under paragraphs (e)(2)(i) and (e)(2)(ii)(C) of this section after January 1, 2005.

(f) *Transfer of operational control.* Any public utility's proposal to participate in a Regional Transmission Organization filed pursuant to paragraph (c)(1) of this section must propose that operational control of that public utility's transmission facilities will be transferred to the Regional Transmission Organization on a schedule that will allow the Regional Transmission Organization to commence operating the facilities no later than December 15, 2001.

Note to paragraph (f): The requirement in paragraph (f) of this section may be satisfied by proposing to transfer to the Regional Transmission Organization ownership of the facilities in addition to operational control.

(g) *Alternative filing.* Any filing made pursuant to paragraph (c)(2) of this section must contain:

(1) A description of any efforts made by that public utility to participate in a Regional Transmission Organization;

(2) A detailed explanation of the economic, operational, commercial, regulatory, or other reasons the public utility has not made a filing to participate in a Regional Transmission Organization, including identification of any existing obstacles to participation in a Regional Transmission Organization; and

(3) The specific plans, if any, the public utility has for further work toward participation in a Regional Transmission Organization, a proposed timetable for such activity, an explanation of efforts made to include public power entities in the proposed Regional Transmission Organization, and any factors (including any law, rule or regulation) that may affect the public utility's ability or decision to participate in a Regional Transmission Organization.

(h) *Public utilities participating in approved transmission entities.* Every public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of March 6, 2000, and that has filed with the Commission on or before March 6, 2000 to transfer operational control of its facilities to a transmission entity that

has been approved or conditionally approved by the Commission on or before March 6, 2000 as being in conformance with the eleven ISO principles set forth in Order No. 888, FERC Statutes and Regulations, Regulations Preamble January 1991–June 1996 ¶31,036 (Final Rule on Open Access and Stranded Costs; see 61 FR 21540, May 10, 1996), must, individually or jointly with other entities, file with the Commission, no later than January 15, 2001:

(1) A statement that it is participating in a transmission entity that has been so approved;

(2) A detailed explanation of the extent to which the transmission entity in which it participates has the characteristics and performs the functions of a Regional Transmission Organization specified in paragraphs (j) and (k) of this section and accommodates the open architecture conditions in paragraph (l) of this section; and

(3) To the extent the transmission entity in which the public utility participates does not meet all the requirements of a Regional Transmission Organization specified in paragraphs (j), (k), and (l) of this section,

(i) A proposal to participate in a Regional Transmission Organization that meets such requirements in accordance with paragraph (d) of this section,

(ii) A proposal to modify the existing transmission entity so that it conforms to the requirements of a Regional Transmission Organization, or

(iii) A filing containing the information specified in paragraph (g) of this section addressing any efforts, obstacles, and plans with respect to conformance with those requirements.

(i) *Entities that become public utilities with transmission facilities.* An entity that is not a public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of March 6, 2000, but later becomes such a public utility, must file a proposal to participate in a Regional Transmission Organization in accordance with paragraph (d) of this section, or an alternative filing in accordance with paragraph (g) of this section, by October 15, 2000 or 60 days prior to the date on which the public utility engages in any transmission of electric energy in interstate commerce, whichever comes later. If a proposal to participate in accordance with paragraph (d) of this section is filed, it must propose that operational control of the applicant's transmission system will be transferred to the Regional Transmission Organization within six months of filing the proposal.

(j) *Required characteristics for a Regional Transmission Organization.* A Regional Transmission Organization must satisfy the following characteristics when it commences operation:

(1) *Independence.* The Regional Transmission Organization must be independent of any market participant. The Regional Transmission Organization must include, as part of its demonstration of independence, a demonstration that it meets the following:

(i) The Regional Transmission Organization, its employees, and any non-stakeholder directors must not have financial interests in any market participant.

(ii) The Regional Transmission Organization must have a decision making process that is independent of control by any market participant or class of participants.

(iii) The Regional Transmission Organization must have exclusive and independent authority under section 205 of the Federal Power Act (16 U.S.C. 824d), to propose rates, terms and conditions of transmission service provided over the facilities it operates.

Note to paragraph (j)(1)(iii): Transmission owners retain authority under section 205 of the Federal Power Act (16 U.S.C. 824d) to seek recovery from the Regional Transmission Organization of the revenue requirements associated with the transmission facilities that they own.

(iv)(A) The Regional Transmission Organization must provide:

(*1*) With respect to any Regional Transmission Organization in which market participants have an ownership interest, a compliance audit of the independence of the Regional Transmission Organization's decision making process under paragraph (j)(1)(ii) of this section, to be performed two years after approval of the Regional Transmission Organization, and every three years thereafter, unless otherwise provided by the Commission.

(*2*) With respect to any Regional Transmission Organization in which market participants have a role in the Regional Transmission Organization's decision making process but do not have an ownership interest, a compliance audit of the independence of the Regional Transmission Organization's decision making process under paragraph (j)(1)(ii) of this section, to be performed two years after its approval as a Regional Transmission Organization.

(B) The compliance audits under paragraph (j)(1)(iv)(A) of this section must be performed by auditors who are not affiliated with the Regional Transmission Organization or transmission facility owners that are members of the Regional Transmission Organization.

(2) *Scope and regional configuration.* The Regional Transmission Organization must serve an appropriate region. The region must be of sufficient scope and configuration to permit the Regional Transmission Organization to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.

(3) *Operational authority.* The Regional Transmission Organization must have operational authority for all transmission facilities under its control. The Regional Transmission Organization must include, as part of its demonstration of operational authority, a demonstration that it meets the following:

(i) If any operational functions are delegated to, or shared with, entities other than the Regional Transmission Organization, the Regional Transmission Organization must ensure that this sharing of operational authority will not adversely affect reliability or provide any market participant with an unfair competitive advantage. Within two years after initial operation as a Regional Transmission Organization, the Regional Transmission Organization must prepare a public report that assesses whether any division of operational authority hinders the Regional Transmission Organization in providing reliable, non-discriminatory and efficiently priced transmission service.

(ii) The Regional Transmission Organization must be the security coordinator for the facilities that it controls.

(4) *Short-term reliability.* The Regional Transmission Organization must have exclusive authority for maintaining the short-term reliability of the grid that it operates. The Regional Transmission Organization must include, as part of its demonstration with respect to reliability, a demonstration that it meets the following:

(i) The Regional Transmission Organization must have exclusive authority for receiving, confirming and implementing all interchange schedules.

(ii) The Regional Transmission Organization must have the right to order redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities.

(iii) When the Regional Transmission Organization operates transmission facilities owned by other entities, the Regional Transmission Organization must have authority to approve or disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards.

(iv) If the Regional Transmission Organization operates under reliability standards established by another entity (*e.g.,* a regional reliability council), the Regional Transmission Organization must report to the Commission if these standards hinder it from providing reliable, non-discriminatory and efficiently priced transmission service.

(k) *Required functions of a Regional Transmission Organization.* The Regional Transmission Organization must perform the following functions. Unless otherwise noted, the Regional Transmission Organization must satisfy these obligations when it commences operations.

(1) *Tariff administration and design.* The Regional Transmission Organization must administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities. As part of its demonstration with respect to tariff administration and design, the Regional Transmission Organization must satisfy the standards listed in paragraphs (k)(1)(i) and (ii) of this section, or demonstrate that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The Regional Transmission Organization must be the only provider of transmission service over the facilities under its control, and must be the sole administrator of its own Commission-approved open access transmission tariff. The Regional Transmission Organization must have the sole authority to receive, evaluate, and approve or deny all requests for transmission service. The Regional Transmission Organization must have the authority to review and approve requests for new interconnections.

(ii) Customers under the Regional Transmission Organization tariff must not be charged multiple access fees for the recovery of capital costs for transmission service over facilities that the Regional Transmission Organization controls.

(2) *Congestion management.* The Regional Transmission Organization must ensure the development and operation of market mechanisms to manage transmission congestion. As part of its demonstration with respect to congestion management, the Regional Transmission Organization must satisfy the standards listed in paragraph (k)(2)(i) of this section, or demonstrate that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The market mechanisms must accommodate broad participation by all market participants, and must provide all transmission customers with efficient price signals that show the consequences of their transmission usage decisions. The Regional Transmission Organization must either operate such markets itself or ensure that the task is performed by another entity that is not affiliated with any market participant.

(ii) The Regional Transmission Organization must satisfy the market mechanism requirement no later than one year after it commences initial operation. However, it must have in place at the time of initial operation an effective protocol for managing congestion.

(3) *Parallel path flow.* The Regional Transmission Organization must develop and implement procedures to address parallel path flow issues within its region and with other regions. The Regional Transmission Organization must satisfy this requirement with respect to coordination with other regions no later than three years after it commences initial operation.

(4) *Ancillary services.* The Regional Transmission Organization must serve as a provider of last resort of all ancillary services required by Order No. 888, FERC Statutes and Regulations, Regulations Preamble January 1991–June 1996 ¶ 31,036 (Final Rule on Open Access and Stranded Costs; see 61 FR 21540, May 10, 1996), and subsequent orders. As part of its demonstration with respect to ancillary services, the Regional Transmission Organization must satisfy the standards listed in paragraphs (k)(4)(i) through (iii) of this section, or demonstrate that an alternative proposal is consistent with or superior to satisfying such standards.

(i) All market participants must have the option of self-supplying or acquiring ancillary services from third parties subject to any restrictions imposed by the Commission in Order No. 888, FERC Statutes and Regulations, Regulations Preamble January 1991–June 1996 ¶ 31,036 (Final Rule on Open Access and Stranded Costs), and subsequent orders.

(ii) The Regional Transmission Organization must have the authority to decide the minimum required amounts of each ancillary service and, if necessary, the locations at which these services must be provided. All ancillary service providers must be subject to direct or indirect operational control by the Regional Transmission Organization. The Regional Transmission Organization must promote the development of competitive markets for ancillary services whenever feasible.

(iii) The Regional Transmission Organization must ensure that its transmission customers have access to a real-time balancing market. The Regional Transmission Organization must either develop and operate this market itself or ensure that this task is performed by another entity that is not affiliated with any market participant.

(5) *OASIS and Total Transmission Capability (TTC) and Available Transmission Capability (ATC).* The Regional Transmission Organization must be the single OASIS site administrator for all transmission facilities under its control and independently calculate TTC and ATC.

(6) *Market monitoring.* To ensure that the Regional Transmission Organization provides reliable, efficient and not unduly discriminatory transmission service, the Regional Transmission Organization must provide for objective monitoring of markets it operates or administers to identify market design flaws, market power abuses and opportunities for efficiency improvements, and propose appropriate actions. As part of its demonstration with respect to market monitoring, the Regional Transmission Organization must satisfy the standards listed in paragraphs (k)(6)(i) through (k)(6)(iii) of this section, or demonstrate that an alternative proposal is consistent with or superior to satisfying such standards.

(i) Market monitoring must include monitoring the behavior of market participants in the region, including transmission owners other than the Regional Transmission Organization, if any, to determine if their actions hinder the Regional Transmission Organization in providing reliable, efficient and not unduly discriminatory transmission service.

(ii) With respect to markets the Regional Transmission Organization operates or administers, there must be a periodic assessment of how behavior in markets operated by others (*e.g.,* bilateral power sales markets and power markets operated by unaffiliated power exchanges) affects Regional Transmission Organization operations and how Regional Transmission Organization operations affect the efficiency of power markets operated by others.

(iii) Reports on opportunities for efficiency improvement, market power

abuses and market design flaws must be filed with the Commission and affected regulatory authorities.

(7) *Planning and expansion.* The Regional Transmission Organization must be responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities. As part of its demonstration with respect to planning and expansion, the Regional Transmission Organization must satisfy the standards listed in paragraphs (k)(7)(i) and (ii) of this section, or demonstrate that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The Regional Transmission Organization planning and expansion process must encourage market-driven operating and investment actions for preventing and relieving congestion.

(ii) The Regional Transmission Organization's planning and expansion process must accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities. The Regional Transmission Organization's planning and expansion process must be coordinated with programs of existing Regional Transmission Groups (See § 2.21 of this chapter) where appropriate.

(iii) If the Regional Transmission Organization is unable to satisfy this requirement when it commences operation, it must file with the Commission a plan with specified milestones that will ensure that it meets this requirement no later than three years after initial operation.

(8) *Interregional coordination.* The Regional Transmission Organization must ensure the integration of reliability practices within an interconnection and market interface practices among regions.

(l) *Open architecture.*

(1) Any proposal to participate in a Regional Transmission Organization must not contain any provision that would limit the capability of the Regional Transmission Organization to evolve in ways that would improve its efficiency, consistent with the requirements in paragraphs (j) and (k) of this section.

(2) Nothing in this regulation precludes an approved Regional Transmission Organization from seeking to evolve with respect to its organizational design, market design, geographic scope, ownership arrangements, or methods of operational control, or in other appropriate ways if the change is consistent with the requirements of this section. Any future filing seeking approval of such changes must demonstrate that the proposed changes will meet the requirements of paragraphs (j), (k) and (l) of this section.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Preamble—List of Petitioners

Abbreviation—Petitioner

1. AEP—American Electric Power System
2. Alliance Companies—American Electric Power Service Corporation, Consumers Energy Company, Detroit Edison Company, FirstEnergy Corp. and Virginia Electric and Power Company
3. CCEM—Coalition for a Competitive Electricity Market
4. CFA—Consumer Federation of America
5. Conectiv—Conectiv
6. CTA—Competitive Transmission Association, Inc.
7. Dairyland—Dairyland Power Cooperative
8. Duke—Duke Energy Corporation
9. Dynegy—Dynegy Inc.
10. East Texas Cooperatives—East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc.
11. EEI—Edison Electric Institute
12. Entergy—Entergy Services, Inc.
13. EPSA—Electric Power Supply Association
14. Independent Companies—New England Power Company, Montaup Electric Company, National Grid Group, plc, Jersey Central Power and Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Vermont Electric Power Company and NSTAR Services Company
15. Industrial Consumers—Electricity Consumers Resource Council, American Iron & Steel Institute and Chemical Manufactures Association
16. ISO Participants—Baltimore Gas and Electric Company, Conectiv, Consolidated Edison Company of New York, Inc., Northeast Utilities Service Company, PP&L,Inc., Potomac Electric Power Company, Public Service Electric and Gas Company
17. Metropolitan—Metropolitan Water District of Southern California
18. Midwest ISO Participants—Alliant Utilities, Ameren, Central Illinois Light Company, Cinergy Corp., Commonwealth Edison Company, Hoosier Energy Rural Electric Cooperative, Inc., Illinois Power Company, Kentucky Utilities Company, Louisville Gas & Electric Company, Northern States Power Company, Southern Indiana Gas & Electric Company, Southern Illinois Power Cooperative, Wabash Valley Power Association, Inc. and Wisconsin Electric Power Company
19. New Orleans—Council of the City of New Orleans
20. NRECA—National Rural Electric Cooperative Association
21. PECO—PECO Energy Company
22. Pennsylvania Commission—Pennsylvania Public Utility Commission
23. PP&L Companies—PP&L, Inc., PP&L EnergyPlus Co., LLC and PP&L Montana, LLC
24. PSE&G—Public Service Electric and Gas Company
25. Puget Sound—Puget Sound Energy, Inc.
26. SMUD—Sacramento Municipal Utility District
27. Snohomish—Public Utility District No. 1 of Snohomish County, Washington
28. SoCal Cities—Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California
29. SoCal Edison—Southern California Edison Company
30. South Carolina Authority—South Carolina Public Service Authority
31. Southern Company—Southern Company Services, Inc. acting as agent for Alabama Power Company, Georgia Power Company, GulfPower Company, Mississippi Power Company and Savannah Electric and Power Company
32. SRP—Salt River Project Agricultural Improvement and Power District
33. Steel Dynamics—Steel Dynamics, Inc.
34. TANC/MID—Transmission Agency of Northern California/Modesto Irrigation District
35. TAPS—Transmission Access Policy Study Group
36. TDU Systems—Alabama Electric Cooperative, Inc., Arkansas Electric Cooperative Corporation, Golden Spread Electric Cooperative, Kansas Electric Power Cooperative, Inc., North Carolina Electric Membership Corporation, Old Dominion Electric Cooperative, Seminole Electric Cooperative, Inc. and South Mississippi Electric Power Association
37. Transmission Owners of NY—Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York

State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas & Electric Corporation, Power Authority of the State of New York
38. United Illuminating—United Illuminating Company

[FR Doc. 00–5021 Filed 3–7–00; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Natural Gas Pipelines; Project Cost and Annual Limits

Issued February 7, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.308(x)(1), the Director of the Office of Energy Projects (OEP) computes and publishes the project cost and annual limits for natural gas pipelines blanket construction certificates for each calendar year.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Michael J. McGehee, Division of Pipeline Certificates, (202) 208–2257.

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the ''limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GDP implicit price deflator' published by the Department of Commerce for the previous calendar year.''

Pursuant to § 375.308(x)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Energy Projects. The cost limits for calendar year 1998, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

Daniel M. Adamson,
Director, Office of Energy Projects.

Accordingly, 18 CFR Part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. Table I in § 157.208(d) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, and miscellaneous rearrangement of facilities.

* * * * *

(d) * * *

Year	Limit	
	Auto proj. cost limit (Col. 1)	Prior notice proj. cost limit (Col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000
1994	6,600,000	18,100,000
1995	6,700,000	18,400,000
1996	6,900,000	18,800,000
1997	7,000,000	19,200,000
1998	7,100,000	19,600,000
1999	7,200,000	19,800,000
2000	7,300,000	20,200,000

* * * * *

3. Table II in § 157.215(a)(5) is revised to read as follows:

§ 157.215 Underground storage testing and development.

(a) * * *

(5) * * *

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000

TABLE II—Continued

Year	Limit
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000

TABLE II—Continued

Year	Limit
1994	4,100,000
1995	4,200,000
1996	4,300,000
1997	4,400,000
1998	4,500,000
1999	4,550,000
2000	4,650,000

* * * * *

[FR Doc. 00–5343 Filed 3–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ54

Child; Educational Institution

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning the definition of a child for purposes of establishing entitlement to additional monetary benefits for a dependent. The amendments are necessary to clarify the definition of a child for VA purposes and to bring the regulations into conformance with the governing statutes as interpreted by VA's General Counsel. This document also makes non-substantive changes for purposes of clarity.

DATES: Effective Date: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Warren M. Jones, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7167.

SUPPLEMENTARY INFORMATION: A veteran who is entitled to compensation under the provisions of 38 U.S.C. 1114 or 1134 is also entitled, under certain circumstances, to additional compensation for dependents, including a child. A veteran who is entitled to pension under the provisions of 38 U.S.C. 1521 is entitled to a higher annual rate of pension because of dependents, including a child. Dependency and indemnity compensation and death pension are also monetary benefits affected by the number of the surviving spouse's dependent children, who, under certain circumstances, may be entitled to these benefits in their own right.

A ''child'' is defined in 38 U.S.C. 101(4)(A)(iii) to include a person who is unmarried, and after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years) is pursuing a course of instruction at an approved educational institution. The implementing regulation is at 38 CFR 3.57(a)(1)(iii).

Section 104(a) of title 38, United States Code, provides that for the purpose of determining whether or not benefits are payable (except those under chapter 35, title 38, United States Code) for a child over the age of eighteen and under the age of twenty-three years who is attending a school, college, academy, seminary, technical institute, university, or other educational institution, the Secretary may approve or disapprove such educational institutions.

In a precedent opinion dated March 19, 1998 (VAOPGCPREC 3–98), VA's General Counsel held that the term ''educational institution'' should be interpreted as including only institutions which are similar in type to the institutions specifically enumerated in 38 U.S.C. 104(a). According to the General Counsel, a home-school program differs from those institutions because the home-school program is not offered to a number of students, but rather is created to serve the needs of a particular student. Also, a home-school is not a permanent organization but rather disbands at completion of the student's program or withdrawal of the student. The General Counsel concluded, therefore, that a person who is receiving instruction in a home-school program is not pursuing a course of instruction at an educational institution and therefore does not qualify as a child within the meaning of 38 U.S.C. 101(4)(A)(iii). This document amends 38 CFR 3.57(a)(1)(iii) accordingly. This document also amends 38 CFR 3.667 to use statutory terminology and to make clarifying changes.

This final rule interprets statutory provisions and makes non-substantive changes. Accordingly, there is a basis under 5 U.S.C. 553 to dispense with prior notice and comment and a delayed effective date.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: February 29, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.57, paragraph (a)(1)(iii) is revised to read as follows:

§ 3.57 Child.

(a) * * *

(1) * * *

(iii) Who, after reaching the age of 18 years and until completion of education or training (but not after reaching the age of 23 years) is pursuing a course of instruction at an approved educational institution. For the purposes of this section and § 3.667, the term ''educational institution'' means a permanent organization that offers courses of instruction to a group of students who meet its enrollment criteria. The term includes schools, colleges, academies, seminaries, technical institutes, and universities, but does not include home-school programs.

(Authority: 38 U.S.C. 101(4)(A), 104(a))

* * * * *

§ 3.667 [Amended]

3. Section 3.667 is amended by removing ''approved school'' and ''approved course of instruction'' wherever they appear and adding, in their place, ''approved educational institution''.

4. Section 3.667 is further amended as follows:

a. Paragraphs (a)(2) and (a)(4) are amended by removing ''based upon a course which'' and adding, in its place, ''based upon a course of instruction at an approved educational institution which'';

b. The first sentence of paragraph (b) is amended by removing ''attending

school'' and adding, in its place, ''attending an approved educational institution''; and

c. The last sentence of paragraph (a)(5) and paragraph (d) are revised to read as follows:

§ 3.667 School attendance.

(a) * * *

(5) * * * Where the child was receiving dependency and indemnity compensation in its own right prior to age 18 and was not attending an approved educational institution on the 18th birthday but commences attendance at an approved educational institution after the 18th birthday, payments may be resumed from the commencing date of the course if evidence of such school attendance is filed within 1 year from that date.

* * * * *

(d) *Transfers to other schools.* When benefits have been authorized based upon school attendance and it is shown that during a part or all of that period the child was pursuing a different course in the same approved educational institution or a course in a different approved educational institution, payments previously made will not be disturbed.

* * * * *

[FR Doc. 00–5571 Filed 3–7–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR PART 21

RIN 2900–AI76

Criteria for Approving Flight Courses for Educational Assistance Programs

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, an interim final rule amending the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). The interim final rule revised the criteria to be used in approving flight courses for the education benefits programs VA administers. In large part, those amendments brought the approval criteria into agreement with various provisions of the Veterans' Benefits Improvement Act of 1996 and with the revised regulations of the Federal Aviation Administration. Without the changes made by the interim final rule, VA would not be able to provide educational assistance for veterans to attend affected flight courses. This document makes changes to the interim final rule to clarify certain provisions and to reflect new statutory changes.

DATES: *Effective Date:* This final rule is effective March 8, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service (225C), Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on June 23, 1998 (63 FR 34127), VA published an interim final rule amending subparts D and K of 38 CFR part 21, regarding criteria for flight training courses as stated in the **SUMMARY** portion of this document.

Interested persons were given 60 days to submit comments. VA received no comments. Based on the rationale set forth in the interim final rule and in this document, we are adopting the provisions of the interim final rule as a final rule, except as stated below.

The provisions of section 204(a) of Public Law 105–368 amended 38 U.S.C. 3034 to change the requirement that an individual enrolling in a flight course needs to have a qualifying medical certificate. Formerly, the individual needed to show evidence of having the certificate throughout the training period. Now, for flight courses beginning on or after October 1, 1998, the individual only needs to have the certificate at the time the course begins. The provisions of 38 CFR 21.4235(a)(2) and (3) in this final rule reflect this statutory change.

In addition, this final rule makes changes in § 21.4235(c) for purposes of clarification. In particular, this final rule clarifies the meaning of the interim final rule provisions in § 21.4235(c) when an individual already has a commercial pilot certificate or instrument rating, or both, for one category and wants a commercial pilot certificate or instrument rating, or both, for an additional category. The interim final rule provided, with certain exceptions, that if an individual ''wants to obtain a commercial pilot certification course in an airplane or powered lift category and does not already have an instrument rating, he or she must also enroll in an instrument rating course simultaneously.'' We intended § 21.4235(c) to mean that if you want to enroll in a commercial pilot certification course for a particular category (airplane, helicopter, or powered lift) and do not have an instrument rating for that category, or if you want to enroll in an instrument rating course for a particular category (airplane, helicopter, or powered lift) and do not have a commercial pilot certificate for the same category, you must enroll in the commercial pilot certification course for the particular category and instrument rating course for that category at the same time. This document makes amendments to clarify this concept.

This document also makes other nonsubstantive changes for purposes of clarification.

Administrative Procedure Act

This document makes changes that are restatements of statutory provisions and nonsubstantive changes for purposes of clarification. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Regulatory Flexibility Act

We affirm the information in the interim final rule document concerning the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance numbers for programs affected by this rule are 64.120 and 64.124. This rule also affects the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Educational institutions, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 22, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the interim final rule amending 38 CFR part 21 (subparts D and K), which was published at 63 FR 34127 on June 23, 1998, is adopted as a final rule with the following changes:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4235, paragraphs (a)(2), (a)(3), and (c) are revised to read as follows:

§ 21.4235 Programs of education that include flight training.

(a) * * *

(2) If enrolled in a course other than an Airline Transport Pilot (ATP) course, hold a second-class medical certificate on the first day of training and, if that course began before October 1, 1998, hold that certificate continuously during training; and

(3) If enrolled in an ATP certification course, hold a first-class medical certificate on the first day of training and, if that course began before October 1, 1998, hold that certificate continuously during training.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

(c) *Pursuit of flight courses.* (1) VA will pay educational assistance to an eligible individual for an enrollment in a commercial pilot certification course leading to Federal Aviation Administration certification for a particular category even if the individual has a commercial pilot certificate issued by the Federal Aviation Administration for a different category, since each category represents a different vocational objective.

(2) VA will pay educational assistance to an eligible individual for an enrollment in an instrument rating course only if the individual simultaneously enrolls in a course required for a commercial pilot certificate for the category for which the instrument rating course is pursued or if, at the time of enrollment in the instrument rating course, the individual has a commercial pilot certificate issued by the Federal Aviation Administration for such category. The enrollment in an instrument rating course alone does not establish that the individual is pursuing a vocational objective, as required for VA purposes, since that rating equally may be applied to an individual's private pilot certificate, only evidencing an intent to pursue a non-vocational objective.

(3) VA will pay educational assistance to an eligible individual for an enrollment in a flight course other than an instrument rating course or a ground instructor course, including courses leading to an aircraft type rating, only if the individual has a commercial pilot certificate issued by the Federal Aviation Administration for the category to which the particular course applies.

(4) VA will pay educational assistance to an eligible individual for an enrollment in a ground instructor certificate course, even though the individual does not have any other flight certificate issued by the Federal Aviation Administration, since the Federal Aviation Administration does not require a flight certificate as a prerequisite to ground instructor certification and ground instructor is a recognized vocational objective.

(5) VA will not pay an eligible individual for simultaneous enrollment in more than one flight course, except as provided in paragraph (c)(2) of this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))

[FR Doc. 00–5572 Filed 3–7–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0178; FRL–6546–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 23, 1999. This final action will incorporate several San Joaquin rules into the federally approved SIP. The intended effect of finalizing this action is to regulate particulate matter (PM–10) emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control PM–10 emissions from fugitive dust sources. EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval, the emission offset sanction will automatically apply unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval and the highway funding sanction will automatically apply 6 months later. (59 FR 39832, August 4, 1994.) Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on April 7, 2000.

ADDRESSES: Copies of the rules and EPA's Technical Support Document are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg Ave., Fresno, CA 93726

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1903.

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 1999 in 64 FR 51489, EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 8010, Fugitive Dust Administrative Requirements for Control of Fine Particulate Matter (PM–10); SJVUAPCD Rule 8020, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM–10) from Construction, Demolition, Excavation, Extraction Activities; SJVUAPCD Rule 8030, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM–10) from Handling and Storage of Bulk Materials; SJVUAPCD Rule 8040, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM–10) from Landfill Disposal Sites; SJVUAPCD Rule 8060, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM–10) from Paved and Unpaved Roads and; SJVUAPCD Rule 8070, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM–10) from Vehicle and/or Equipment Parking, Shipping,

Receiving, Transfer, Fueling, and Service Areas. These rules were adopted by SJVUAPCD on April 25, 1996 and submitted by the California Air Resources Board to EPA on July 23, 1996. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the proposed rule (PR) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PR. EPA is finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval because of the remaining deficiencies. Rule deficiencies include lack of appropriate standards and/or test methods that would ensure a level of control consistent with RACM or BACM, unsupported source exemptions, clauses containing inappropriate Executive Officer discretion or language that does not establish a firm threshold upon which to base compliance with rule requirements, and lack of recordkeeping. A detailed discussion of the rule provisions and evaluations has been provided in the PR and in the Technical Support Document (TSD) for the PR, which is available at EPA's Region IX office (TSD dated August 31, 1999).

II. Response to Public Comments

A 45-day public comment period was provided in 64 FR 51498, September 23, 1999, which was extended an additional 30 days in 64 FR 61051, November 9, 1999. EPA received four comment letters [1] on the PR from the California Cotton Ginners and Growers Association (CCGGA), the Nisei Farmers League (NFL), the Western States Petroleum Association (WSPA), and SJVUAPCD. The comments have been evaluated by EPA and a summary of the major comments and EPA's responses are set forth below. EPA has responded to all comments in a TSD associated with this final rulemaking.

Introduction to EPA's Responses to Comments

The commenters [2] generally express a concern with the implementation of control measures for fugitive dust sources, in the belief that the state of scientific research concerning PM–10 sources in the San Joaquin Valley is not advanced enough to support such measures. This concern suggests that the commenters do not support the current requirements imposed by the Regulation VIII fugitive dust rules, nor the District's consideration of adopting additional rules for fugitive dust sources until they are satisfied with the state of scientific research. In their letters to EPA, the commenters also incorporate concepts that are typically evaluated in the context of a Serious PM–10 Nonattainment Area State Implementation Plan, such as consideration of which control measures are needed to reach attainment of federal ambient air quality standards, and which may not be needed.

While EPA addresses the commenters' concerns in terms of how they relate specifically to this final rulemaking, EPA does not address here the broader questions raised by the commenters due to the limited nature of this rulemaking. The Regulation VIII rules are already imposed by the SJVUAPCD. With this action, EPA is simply carrying out its responsibility under section 110(k) of the CAA concerning State submittals. The State of California submitted to EPA the Regulation VIII fugitive dust rules that the SJVUAPCD adopted to address PM–10 emissions in the San Joaquin Valley. Once the State submits such rules, EPA must evaluate them and determine if they can be approved into the California PM–10 SIP. In conducting its evaluation, EPA must apply the applicable provisions of the CAA and its regulations and guidance to the rules submitted by the State.

Comment: CCGGA, NFL, WSPA and KCFB comment that many of EPA's comments (in the proposed rule) center on the comparison to EPA's BACM Guidance Document [3]. The commenters believe this may be inappropriate because EPA's guidance document is primarily based on wind erosion derived emission factors. They contend that wind erosion is not an issue in the San Joaquin Valley with respect to exceedences of the federal ambient air quality standard for PM–10.

Response: The rule deficiencies identified by EPA predominantly address PM–10 emissions from mechanical operations such as earthmoving at construction sites and driving on paved and unpaved surfaces. EPA's BACM Guidance Document does include information and emission factors for such sources. EPA also identified a few deficiencies with the rules' windblown dust requirements. However, SJVUAPCD has not demonstrated that inactive surfaces and storage piles subject to Regulation VIII are insignificant sources.

Comment: CCGGA, NFL, WSPA and KCFB comment that EPA is focussed on primary particulate matter and that preliminary studies in the San Joaquin Valley indicate that this may be inaccurate. Actual ambient measurements of PM/NO_X ratios indicate that the current emission inventory PM/NO_X ratios are two to three times higher than the measured ambient PM/NO_X ratios, scientifically verifying that an overestimating of primary PM exists. Additionally, other studies have indicated that secondary aerosols, such as ammonium nitrate and ammonium sulfate may contribute as much as 35 percent of the total ambient PM–10 on an annual average basis in the San Joaquin Valley. This is dramatically increased during the winter months.

Response: EPA believes it is important to consider the contribution of both secondary and primary particulates to the PM–10 levels in the San Joaquin Valley. EPA's action on these fugitive dust rules does not preclude additional control measures in the San Joaquin Valley that focus on secondary aerosols. However, the information presented by the commenters does not support the elimination of RACM/BACM requirements for primary particulate sources. Primary particulates are a significant portion of the emissions inventory (according to the commenters' information, as much as 65% on an annual average basis). The RACM/BACM requirements of the Act apply unless a PM–10 source is demonstrated to be de minimis.

Comment: CCGGA, NFL, WSPA and KCFB comment that control measures must not be implemented until such time as they can be demonstrated with sound scientific research. CCGGA, NFL and WSPA comment that the California Regional Particulate Matter Air Quality Study is the most sophisticated, comprehensive PM–10 study in the world.

Response: Current research efforts are improving the available information on PM–10 emissions in San Joaquin Valley. However, scientific studies already confirm that PM–10 is generated from the types of sources targeted by Regulation VIII, such as unpaved roads, paved roads and earthmoving

[1] EPA also received comments from the Kings County Farm Bureau (KCFB) following expiration of the public comment period. Nevertheless, EPA has considered and responded to KCFB's comments along with the comments received within the allowed timeframe.

[2] EPA's use of ''commenters'' here does not refer to SJVUAPCD.

[3] ''Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures'', U.S. EPA, September 1992.

activities.[4] EPA's BACM Guidance document [5] and numerous other reports set forth basic and practical controls that effectively reduce PM–10 from fugitive dust sources, such as applying water and paving, that are being effectively implemented on fugitive dust sources in PM–10 nonattainment areas. The exemption of relevant agricultural sources from the Regulation VIII requirements has not been justified under BACM criteria.

Comment: CCGGA, NFL, WSPA and KCFB comment that EPA must also consider the time of year when the San Joaquin Valley is subject to exceedances of the PM–10 standard, and then reassess their comments in light of that information.

Response: EPA's action on these rules does not preclude seasonal control measures. If seasonal control measures are developed by San Joaquin, EPA will evaluate them in light of CAA requirements and EPA policy.

Comment: CCGGA, NFL, WSPA and KCFB comment that recent development of the concept of a voluntary plan for reducing emissions at agricultural operations should be considered by EPA when discussing unpaved roads, mud and dirt track-out, and equipment yards at farming operations. KCFB comments that the agricultural industry has successfully regulated themselves in many environmental arenas using incentives and voluntary strategies. SJVUAPCD requests EPA to delay the final rulemaking for Regulation VIII until the completion of the U.S. Department of Agriculture/EPA Agriculture Air Quality Task Force Voluntary Compliance Policy. SJVUAPCD states that this delay would allow District staff sufficient time to incorporate appropriate strategies during the development of Rule 8080 [6] before the expiration of the 18-month sanction deadline. SJVUAPCD also asks that EPA revise the Technical Support Document for the Regulation VIII rulemaking to reflect the final Voluntary Compliance Policy.

Response: The exemptions for agricultural sources that EPA has listed as deficiencies in this final rulemaking are based on the fact that: (1) The District has not demonstrated that the exempt sources are de minimis and therefore not subject to BACM and; (2) BACM is not being implemented through some alternative means to Regulation VIII. While EPA is actively participating on the referenced Agricultural Air Quality Task Force, only draft principles have been developed thus far. The Agency has not published a Voluntary Compliance Policy and it is unclear when, if ever, such a policy would be finalized. EPA has exceeded the statutory deadline for action on these rules.[7] When EPA takes action on SIP submittals, the Agency must apply EPA guidance that exists at the time. If the SJVUAPCD develops and the State submits voluntary measures to address the BACM requirements for agricultural sources associated with this final rulemaking, EPA will evaluate the submittal under the CAA 189(b)(1) BACM and other applicable CAA requirements and Agency policy.

III. EPA Action

None of the comments received provided sufficient basis for EPA to alter its proposed action. Therefore, EPA is finalizing a limited approval and a limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. These deficiencies were discussed in the PR. As stated in the PR, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin pursuant to Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date of the final rule, the emission offset sanction will automatically apply at the 18 month mark and the highway funding sanction will automatically apply 6 months later. (59 FR 39832, August 4, 1994.) It should be noted that the rules covered by this FR have been adopted by the SJVUAPCD and are currently in effect in the SJVUAPCD. EPA's limited disapproval action will not prevent the SJVUAPCD or EPA from enforcing these rules.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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[4] See J. Watson, J. Chow, J. Gillies et al, ''Effectiveness Demonstration of Fugitive Dust Control Methods for Public Unpaved Roads and Unpaved Shoulders on Paved Roads'', Desert Research Institute, December 31, 1996, and ''Improvement of Specific Emission Factors (BACM Project No. 1)'', Midwest Research Institute, March 29, 1996.

[5] Op. Cit.

[6] SJVUAPCD indicates that Rule 8080 is potentially a new rule that would affect agricultural activities on non-cultivated land.

[7] The statutory deadline expired 18 months following EPA's receipt of the rules' submittal.

C. Executive Order 13045

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

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

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. National Technology Transfer and Advancement Act

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

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

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 17, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(F) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rules 8010, 8020, 8030, 8040, 8060, and 8070 adopted on April 25, 1996.

* * * * *

[FR Doc. 00–5502 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300978–FRL–6492–7]

RIN 2070–AB78

Bentazon; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of bentazon (3-isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide) and its 6- and 8-hydroxy metabolites in or on succulent peas. In addition the tolerance expression for animal commodities (meat, milk, poultry, and eggs) established in 40 CFR 180.355(a) is being corrected to that of the combined residues of bentazon and its metabolite 2-amino-*N*-isopropyl benzamine (AIBA). BASF Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective March 8, 2000. Objections and requests for hearings, identified by docket control number OPP–3000978, must be received by EPA on or before May 8, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300978 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone number: (703) 305–6224; and e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300978. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 17, 1998 (63 FR 43937) (FRL–6018–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) 6F4640 and 3F4270 for a tolerance by BASF Corporation. This notice included a summary of the petition prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.355(a) be amended by establishing a tolerance for combined residues of the herbicide, bentazon and its 6- and 8-hydroxy metabolites, in or on succulent peas at 3.0 part per million (ppm). Tolerances have been established under 40 CFR 180.355(a) for combined residues of bentazon and its 6- and 8-hydroxy metabolites in/on succulent peas at 0.5 ppm and pea forage at 3 ppm to support a 2 × 1 lb ai/A (pounds active ingredient per acre), 30–day preharvest interval (PHI) use pattern. The new tolerance is proposed to support a 2 × 1 lb ai/A, 10–day PHI use pattern.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical

residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of bentazon and its 6- and 8-hydroxy metabolites in/on succulent peas at 3.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by bentazon are discussed in this unit.

1. Acute toxicity data for bentazon show that this chemical is not acutely toxic by the oral, inhalation, or dermal routes of exposure (Toxicity Categories III and IV). It is moderately irritating to the eye (Toxicity Category II) and slightly irritating to the skin (Toxicity Category IV). Bentazon is also a dermal sensitizer.

2. A 21–day dermal toxicity study in rabbits was conducted at doses of 0, 250, 500, or 1,000 mg/kg/day. The no observed adverse effect level (NOAEL) is 1,000 mg/kg/day, HDT (highest dose tested). The lowest observed adverse effect level (LOAEL) is greater than 1,000 mg/kg/day.

3. A 13–week feeding study in rats was conducted at doses of 0, 400, 1,200, or 3,600 ppm; equivalent to 0, 25.3, 77.8, or 243.3 mg/kg/day for males and 0, 28.9, 86.1, or 258.3 mg/kg/day for females. The NOAEL is 77.8 mg/kg/day. The LOAEL is 243.3 mg/kg/day for males and 258.3 mg/kg/day for females based on depressed mean body weights in females, a slight increase in food consumption in males, increased thromboplastin and prothrombin times (males only), and increased kidney and liver weights.

4. A chronic feeding study in dogs was conducted at doses of 0, 100, 400, or 1,600 ppm; equivalent to 0, 3.2, 13.1, or 52.3 mg/kg/day. The NOAEL is 3.2 mg/kg/day. The LOAEL is 13.1 mg/kg/day based on a dose-dependent presence of feces with red areas in dogs at 13.1 mg/kg/day (400 ppm) and 52.3 mg/kg/day (1600 ppm) and slight to severe anemia at the high dose.

5. A chronic feeding/carcinogenicity study in rats was conducted at doses of 0, 200, 800, or 4,000 ppm; equivalent to 0, 9, 35, or 180 mg/kg/day in males and 0, 11, 45, or 244 mg/kg/day in females. The NOAEL is 9/11 mg/kg/day, in males/females. The LOAEL is 35/45 mg/kg/day, in males/females, based on increased water consumption, changes in urinalysis and hematology/coagulation parameters, and decreased absolute and relative thyroid weight. No evidence of carcinogenicity was observed.

6. A oncogenicity study in mice was conducted at doses of 0, 100, 400, or 2000 ppm; equivalent to 0, 12, 47, or 242 mg/kg/day in males and 0, 12, 48, or 275 mg/kg/day in females. The NOAEL is 12 mg/kg/day. The LOAEL is 47/48 mg/kg/day in males/females, based on increased prothrombin time, increased liver and kidney weights, calcification of the *tunica albuginea*, and islet cell hyperplasia of the pancreas. No evidence of carcinogenicity was observed.

7. A developmental study in rats was conducted at doses of 0, 40, 100, or 250 mg/kg/day. The maternal NOAEL is 250 mg/kg/day (HDT). The maternal LOAEL is greater than 250 mg/kg/day. The developmental NOAEL is 100 mg/kg/day. The developmental LOAEL is 250 mg/kg/day, based on increased postimplantation loss, skeletal variations (incomplete or absent ossification in the phalangeal nucleii of the extremities, the sternebrae and cervical vertebrae), and reduced body weights or fetuses surviving to day 21.

8. A developmental study in rabbits was conducted at doses of 0, 75, 150, or 375 mg/kg/day. The maternal/developmental NOAEL is 150 mg/kg/day. The maternal/developmental LOAEL is 375 mg/kg/day (HDT), based on doe with partial abortion, embryonic resorptions, and no living fetuses.

9. A 2-generation reproduction toxicity study in rats was conducted at doses of 0, 200, 800, or 3,200 ppm; equivalent to 0, 15, 62, or 249 mg/kg/day. The parental systemic NOAEL is 62 mg/kg/day. The parental systemic LOAEL is 249 mg/kg/day, based on increased incidences of kidney mineralization and liver microgranuloma. The reproductive NOAEL is 15 mg/kg/day. The reproductive LOAEL is 62 mg/kg/day, based on reduced pup growth (body weight gain) during lactation.

10. There is no concern for mutagenic activity in several studies, including: Salmonella spp., *in vitro* mammalian cell gene mutation assays, in vivo mouse bone marrow micronucleus assay, and an unscheduled DNA synthesis assay.

11. A rat metabolism study with oral dosing showed that parent bentazon was the major metabolite found in urine, amounting to 77.37–91.02% of the dose. Another metabolism study demonstrated that the absorption and excretion of bentazon or its sodium salt in male rats after oral administration is rapid and essentially equivalent. No sex differences in the absorption, metabolism or excretion of sodium bentazon are apparent based or equivalent excretion half-lives (4 hours), pattern of excretion (greater than 90% in urine) or urinary metabolite identification (greater than 80% as free acid).

12. A dermal penetration study in rats was conducted at doses of 0.12, 1.2, 12, or 120 mg/kg. Single topical application of radioactive sodium bentazon did not appear to significantly penetrate the skin since a maximum of only 1–2% of the radioactivity was recovered (primarily in the urine) at 72 hours. Negligible amounts of dermally applied radioactivity were retained in the liver, kidneys, G.I. tract and carcass. For risk assessment purposes, dermal penetration is estimated to be 1–2%.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute reference dose (aRfD) of 1 mg/kg/day was established for the subpopulation group, females 13–50 years old only, based on a no-observed-adverse-effect level (NOAEL) of 100 mg/kg/day from a developmental toxicity study in the rat. The effects observed at the next higher dose level of 250 mg/kg/day (the highest dose tested) were an increase in postimplantation loss, skeletal variations, and reduced weight of fetuses. These effects are presumed to occur after a single exposure *in utero* and, therefore, are considered to be appropriate. A 10x FQPA safety factor is applied to females 13–50 years old, because there was evidence of increased susceptibility in the developmental toxicity study in rats and in the two-generation reproduction toxicity study in rats. An uncertainty factor of 100 is used to account for inter-species differences and intra-species variability. Therefore, the aPAD (acute population adjusted dose) is 0.1 mg/kg/day for females 13–50 years old. An acute dose and endpoint were not selected for the general U.S. population (including infants and children) because there were no effects observed in oral toxicology studies, including maternal toxicity in the developmental toxicity studies in rats and rabbits, that are attributable to a single exposure (dose).

2. *Short- and intermediate-term toxicity*. A short-term dermal dose/endpoint was not identified since no dermal or systemic toxicity was seen at the limit dose of 1,000 mg/kg/day in a 21-day dermal toxicity study in rabbits. An intermediate-term dermal endpoint was chosen from a one-year feeding study in dogs. A NOAEL of 13.1 mg/kg/day was chosen based on the presence of feces with red areas seen in dogs at weeks 4, 6, and 12 at a LOAEL of 52.3 mg/kg/day. A long-term dermal endpoint was chosen from a one-year feeding study in dogs. A NOAEL of 3.2 mg/kg/day was selected based on a dose-dependent presence of feces with red areas in dogs at the LOAEL of 13.1 mg/kg/day (400 ppm). EPA determined that since oral NOAELs were selected, a dermal absorption (DA) factor of 2%, obtained from a dermal penetration study, should be used for the risk assessment.

No appropriate inhalation studies were available for endpoint selection; therefore, EPA selected oral NOAELs for inhalation exposure risk assessment. For margin of exposure (MOE) calculations, the short-term inhalation exposure NOAEL is 100 mg/kg/day (from a developmental toxicity study in rats, therefore, use 100% inhalation absorption). Dermal exposure can not be combined with inhalation, because a dose/endpoint (hazard) was not identified for short-term dermal exposure risk assessment. The intermediate- and long-term inhalation exposure NOAELs are 13.1 mg/kg/day and 3.2 mg/kg/day, respectively, from a chronic dog study. For intermediate- and long-term inhalation exposure risk assessments, the dermal and inhalation exposures can be combined (using 100% absorption for inhalation and 2% absorption for dermal) because the doses selected are oral equivalent doses and the same toxic effect was observed (feces with red areas).

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for at 0.03 milligrams/kilograms/day (mg/kg/day). This is RfD based on the NOAEL of 3.2 mg/kg/day in the one year dog feeding study and an uncertainty factor of 100 (10X for inter-species differences and 10X for intra-species variability). The LOAEL in the study was based on dose-dependent presence of feces with red areas in dogs at 13.1 mg/kg/day (seen at week 33) and at 52.3 mg/kg/day (HDT), and slight to severe anemia at the high dose. Using the 10x FQPA safety factor, the chronic population adjusted dose (cPAD) for bentazon is 0.003 mg/kg/day.

4. *Carcinogenicity*. Bentazon has been classified as a Group ''E'' chemical (evidence of non-carcinogenicity for humans) based upon a lack of evidence of carcinogenicity in two adequate studies (rats and mice).

C. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.355(a)) for the combined residues of bentazon (3-isopropyl-1H-2,1,3-benzothiadiazin-4(3H)-one-2,2-dioxide) and its 6- and 8-hydroxy metabolites, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from as follows:

A refined chronic dietary exposure analysis (Tier 3) was performed using anticipated residues (ARs) for succulent peas and tolerance level residues for all other commodities for the general U.S. population and all population subgroups. For the chronic analysis, percent crop treated (%CT) information was used for several commodities.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT) information as follows.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to

underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which bentazon may be applied in a particular area.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute dietary analysis for females 13–50 years old (the subpopulation of concern) assumed published and proposed tolerance levels and 100% crop treated information for all commodities (Tier I). For all the females 13–50 years old subgroups, 5% or less of the aPAD is occupied by dietary exposure from food. Results of the acute analysis indicate that the acute dietary risk residues in food associated with existing and proposed uses of bentazon do not exceed EPA's level of concern.

ii. *Chronic exposure and risk.* A refined chronic dietary exposure analysis (Tier 3) was performed using anticipated residues for succulent peas and tolerance level residues for all other commodities for the general U.S. population and all population subgroups. For the chronic analysis, percent crop treated information was used for several commodities. The percent chronic population adjusted dose (% cPADs) for all subgroups were less than 100%, with the highest being 28% for the children 1–6 years subgroup. Results of the chronic analysis indicate that the chronic dietary risk from from residues in food associated with the existing and proposed uses of bentazon do not exceed EPA's level of concern.

2. *From drinking water.* SCI-GROW (Screening Concentration in Ground Water) modeling indicates that bentazon residue (bentazon + AIBA) concentrations in groundwater used as drinking water are not likely to exceed 4.25 ppb. The other regulated bentazon metabolites (6-hydroxy and 8-hydroxy bentazon) have not been found in environmental fate studies. Limited monitoring data indicated a range of bentazon concentrations (excluding degradation products) in groundwater of 20 to 120 ppb. Because monitoring data indicate a higher concentration than the SCI-GROW screening model, EPA used the 20 ppb as the environmental exposure concentration (EEC) for both acute and chronic scenarios. The EEC for surface water (from EPA's Pesticide Root Zone Model-EXAMS modeling) is 41 ppb for the peak (acute) and 8 ppb for the 36-year annual mean (chronic). The surface and ground water estimates were used to compare against back-calculated drinking water levels of comparison (DWLOCs) for aggregate risk assessments.

i. *Acute exposure and risk.* For the acute scenario, the DWLOC is 2800 ppb for females (13+/nursing).

ii.*Chronic exposure and risk.* For the chronic scenario, the DWLOCs are 95, 82, 22, 94, and 95 ppb for the US population, females (13+/nursing), children (1–6 years), Hispanics and males (13–19 years), respectively.

3. *From non-dietary exposure.* Because bentazon is registered for consumer use on turf and ornamentals, there is potential for residential exposure to adult applicators and adults and children entering recreational and residential areas treated with bentazon.

Short- and intermediate-term exposure and risk. The handler exposure is expected to be short-term while the post-application exposure is expected for both the short- and intermediate-term. However, since there is no short-term dermal endpoint, the residential post-application exposure cannot be aggregated with the handler exposure. Short-term, non-dietary ingestion exposure for toddlers is not a concern because EPA determined that there is no acute dietary or oral endpoint applicable to infants and children. However, intermediate-term, non-dietary ingestion exposure to toddlers playing on treated turf is possible and was assessed using the intermediate-term endpoint identified from the one-year dog feeding study. Intermediate-term exposure is not expected for the ornamental use. The level of concern for residential exposures to bentazon is for MOE's less than 1,000.

There are no chemical-specific or site-specific data available to determine the potential risks associated with residential exposures from handling bentazon. Therefore, the exposure estimates are based on assumptions and generic data as specified by the December 18, 1997 Draft HED Standard Operating Procedures (SOPs) for Residential Exposure Assessments. Because bentazon is applied no more than twice per year, only short-term exposure is expected for the residential handler. Because a dermal endpoint of concern for the short-term duration was not identified, only inhalation exposure estimates are relevant. Assuming that a homeowner treats his lawn and ornamental plants on the same day, the aggregate inhalation short-term MOE is 500,000 for the residential handler. This estimate indicates that the potential handler risks from residential uses of bentazon do not exceed EPA's level of concern.

Environmental fate data indicate that bentazon is moderately resistant to degradation ($t_{1/2}$ = 24–65 days). Due to the length of time bentazon is expected to remain in the environment, both short- and intermediate-term residential post-application exposures are expected. For toddlers playing on treated turf, the oral intermediate-term endpoint was used to assess toddler incidental ingestion exposures. Based on the residential use pattern, no long-term post-application residential exposure is expected. Short-term, non-dietary oral exposures to the toddler were not assessed because the subgroup of concern was identified as females 13–50 years old. This endpoint is not applicable to the infant and children population subgroups. Intermediate-term, post-application exposure is not expected from the ornamental use of bentazon.

Changes to the Residential SOPs have been proposed that alter the residential post-application scenario assumptions. The proposed assumptions are expected to better represent residential exposure and are still considered to be high-end, screening level assumptions. Therefore, EPA has deviated from the current Residential SOP assumptions and uses the proposed assumptions to calculate exposure estimates.

The dermal post-application exposure from the turfgrass use for the adult results in an MOE of 9,100. The MOEs for post-application exposures for the toddler are calculated as 6,400 and 3,500 for dermal and hand-to-mouth exposures, respectively. The aggregate intermediate MOE for post-application residential exposure to toddlers is 2,200. Therefore, all residential post-application exposure estimates are well below EPA's level of concern. Because these estimates were calculated using

screening-level assumptions, EPA believes that the actual risks will be lower. For the intermediate-term, typical lawn maintenance practices such as mowing and watering are expected to expedite the dissipation of bentazon on turfgrass. Therefore, with less residue available, potential incidental hand-to-mouth exposures are expected to be substantially lower.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether bentazon has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, bentazon does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that bentazon has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Acute risk estimates from aggregate exposure to bentazon in food and water are below EPA's level of concern. For Tier 1 acute dietary exposure analysis, EPA assumed that 100% of the crops treated with bentazon and that residues equaled the tolerance level. For all females 13–50 years old subgroups, less than or equal to 5% of the aPAD is occupied by dietary exposure from food. The acute dietary risk from food associated with the existing and proposed uses of bentazon is below EPA's level of concern. The estimated average concentrations of bentazon in surface and ground water are less than EPA's levels of comparison for bentazon in drinking water as a contribution to acute aggregate exposure.

2. *Chronic risk.* Chronic (Non-Cancer) Aggregate Risk estimates are below EPA's level of concern. The chronic dietary exposure analysis for residues in food incorporated anticipated residues for succulent peas and assumed tolerance level residues for all other commodities. Percent CT information was used for several commodities. The %cPADs for all subgroups were less than 100%, with the highest being 28% for the children (1–6 years old) subgroup. Thus, the chronic dietary risk estimates from food associated with existing and proposed uses of bentazon do not exceed EPA's level of concern. For ground and surface water, the estimated average concentrations of bentazon are less than EPA's levels of comparison for bentazon in drinking water as a contribution to chronic aggregate exposure.

3. *Short- and intermediate-term risk.* Aggregate short-term risk estimates are below EPA's level of concern. In aggregating short-term risk, EPA considered background chronic dietary exposure (food + drinking water) and short term inhalation exposures from residential uses. Because a dermal endpoint of concern for the short-term duration was not identified, only inhalation exposure estimates are relevant for the adult handler. Short-term inhalation exposure may occur for a homeowner treating turf and ornamentals on the same day. The total short-term food and residential aggregate MOE value is 220,000. As this MOE is greater than 1,000, the short-term food and residential aggregate risk estimate is below EPA's level of concern. For surface and ground water, the estimated average concentrations of bentazon are less than EPA's levels of comparison for bentazon in drinking water as a contribution to short-term aggregate exposure.

Aggregate intermediate-term risk estimates are below EPA's level of concern for adults. In aggregating intermediate-term risk, EPA considered background chronic dietary exposure (food + drinking water) and intermediate-term dermal exposures from residential uses. For adults, dermal post-application exposures may result from dermal contact with treated turf. For adults, the total food and residential intermediate-term aggregate MOE is 7,600. As this value is greater than 1,000, the intermediate-term aggregate risk estimate is below EPA's level of concern. For surface and ground water, the estimated average concentrations of bentazon are less than EPA's levels of comparison for bentazon in drinking water as a contribution to intermediate-term aggregate exposure.

4. *Aggregate cancer risk for U.S. population.* A cancer risk assessment was not done. Bentazon is classified as a Group E chemical (evidence of non-carcincinogenicity for humans) based upon lack of evidence of carcinogenicity in rats and mice.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to bentazon residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of bentazon, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* Two studies were described in Toxicology Profile (see Unit III.A. Tox profile).

iii. *Reproductive toxicity study.* A reproductive toxicity study was described in the Toxicology Profile (see Unit III.A. Tox profile).

iv. *Prenatal and postnatal sensitivity.* The toxicological data base for evaluating prenatal and postnatal toxicity of bentazon is complete with respect to current data requirements.

There was evidence of increased susceptibility following*in utero* exposure to bentazon in the prenatal developmental toxicity study in rats and there was quantitative evidence of increased susceptibility following pre-/postnatal exposure to bentazon in the 2-generation reproduction study in rats.

v. *Conclusion*. There is a complete toxicity data base for bentazon and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA Safety Factor for protection of infants and children will be retained at 10x for bentazon due to the increased pre-/postnatal susceptibility. The FQPA Safety Factor for bentazon is applicable to females 13–50 years old only for acute dietary and residential exposure assessments because increased susceptibility was demonstrated in the developmental study in rats which is designed to evaluate chemical effects on the mother and fetus from the time of implantation of the fertilized egg in the uterus through the end of gestation. The safety factor is also applicable to all population subgroups for chronic dietary and residential exposure assessments because increased susceptibility was demonstrated in the 2-generation reproduction study (which is designed to assess the effects of the pesticide on male and female reproductive processes, from egg and sperm production and mating through pregnancy, birth, nursing, growth and development, and maturation).

2. *Acute risk*. An acute endpoint was not identified and this risk assessment was not required.

3. *Chronic risk*.Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to bentazon from food will utilize 28% of the chronic PAD for children (1–6 years old). EPA generally has no concern for exposures below 100% of the chronic PAD because the chronic PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to bentazon in drinking water and from non- dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the chronic PAD.

4. *Short- or intermediate-term risk.* Although bentazon a registered herbicide for use on turf and ornamentals, short-term non-dietary ingestion exposure for toddlers is not assessed because EPA determined that there is no acute dietary or oral endpoint applicable to infants and children.

Aggregate intermediate-term risk estimates are below EPA's level of concern for infants and children. In aggregating intermediate-term risk, EPA considered background chronic dietary exposure (food + drinking water) and intermediate-term, non-dietary oral and dermal exposures from residential uses. For toddlers, dermal and non-dietary oral postapplication exposures may result from dermal contact with treated turf as well as hand-to-mouth transfer of residues from turfgrass. For infants and children, the total food and residential intermediate-term aggregate MOE is 2,000. As this value is greater than 1,000, the intermediate-term aggregate risk estimate is below EPA's level of concern. For surface and ground water, the estimated average concentrations of bentazon are less than EPA's levels of comparison for bentazon in drinking water as a contribution to intermediate-term aggregate exposure.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure bentazon to residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The qualitative nature of the residue in plants is considered to be adequately understood. Radiolabelled studies conducted at rates of up to 2.5 lb ai/A on beans, corn, soybeans, rice and wheat indicate that bentazon is readily absorbed from foliage, roots and seeds, and translocates in some plant types. Bentazon is rapidly metabolized, conjugated and incorporated into natural plant constituents. Metabolism involves the hydroxylation of bentazon at the 6- and 8-positions. The terminal residues of regulatory concern are bentazon, 6-hydroxy bentazon, and 8-hydroxy bentazon. As there are no livestock feed items associated with succulent peas, issues pertaining to the nature of the residue in animals are not germane to this regulation.

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for the determination of residues of bentazon and its 6- and 8-hydroxy metabolites in/on plant commodities. The Pesticide Analytical Manual (PAM) Vol. II lists Method II, a gas liquid chromatography (GLC) method with flame photometric detection for the determination of bentazon and its hydroxy metabolites in/on corn, rice, and soybeans; the limit of detection for each compound is 0.05 ppm. Method III, modified from Method II, is available for the determination of bentazon and its hydroxy metabolites in/on peanuts and seed and pod vegetables with a limit of detection of 0.05 ppm for each compound.

C. Magnitude of Residues

Ten field residue trials were conducted in seven different states with a distribution which corresponds well with the suggested growing region for succulent garden peas. The data indicated that combined residues of bentazon and its 6- and 8-hydroxy metabolites will not exceed the proposed tolerance. BASF provided data only on green peas. The raw agricultural commodity (RAC) analyzed in these trials was the succulent seeds with the pods. At the time these trials were conducted in 1993, succulent seeds with pods was the appropriate RAC. In 1995, the guidelines were revised and the RAC was redefined as edible-podded peas and succulent shelled peas. Thus, the submitted field trials do not fulfill current guidelines. BASF is required to perform three (3) edible-podded pea trials. The additional studies will satisfy the new guidelines and provide EPA with confirmatory data. EPA is proceeding with this tolerance while the additional trials are conducted because the available data are adequate to make a safety determination.

D. International Residue Limits

There is a Codex Maximum Residue Limit (MRL) of 0.2 ppm for bentazon and its metabolites established in/on garden peas (young pods), a Canadian MRL for parent only of 0.1 ppm (negligible) established in/on peas, and a Mexican limit for parent (presumed) of 0.05 ppm established in/on green peas. Therefore, a compatibility issue is relevant to the proposed tolerance. Harmonization of the 3.0 ppm U.S. tolerance will not be possible as the use pattern proposed on the Basagran Herbicide label will result in residues which greatly exceed the Codex MRL. EPA thus suggests that BASF submit the residue data and Good Agricultural Practice (GAP) to Codex once the U.S. registration and tolerance are approved.

E. Rotational Crop Restrictions

Currently, there are no plantback restrictions on the Basagran Herbicide label. Confined rotational crop data indicate that bentazon residues may be taken up by rotational crops (39 to 102 day plantback intervals), and that field rotational crop studies are needed for the purposes of reregistration in order to determine if plantback restrictions for bentazon end-use products are needed.

If plantback restrictions are needed based upon these studies then the Herbicide label will be revised.

V. Conclusion

Therefore, the tolerance is established for combined residues of bentazon and its 6- and 8-hydroxy metabolites in pea, succulent at 3.0 ppm. In addition, the tolerance expression for animal commodities in 40 CFR 180.355(a) is corrected as the combined residues of bentazon and its metabolite 2-amino-*N*-isopropyl benzamide (AIBA).

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300978 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 8, 2000.

1. Filing the request. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C-400 , Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

Pursuant to FFDCA section 408(m)(1), EPA is authorized to waive any fee requirement ''when in the judgment of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. N.W., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300978, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and*

Safety Risks (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Because tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.355 is amended in paragraph (a) by revising the introductory text and redesignating it as paragaph (a)(1), by revising the entry for ''pea, succulent'' in the table in newly designated paragraph (a)(1), by removing from the table in newly designated paragraph (a)(1) the entries for cattle, fat; cattle, meat byproducts; cattle, meat; egg; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; milk; poultry, fat; poultry, meat byproducts; poultry, meat; sheep, fat; sheep, mbyp; and sheep, meat, and by adding new paragraph (a)(2). The additions and revision read as follows:

§ 180.355 Bentazon; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the herbicide bentazon (3-isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide) and its 6- and 8-hydroxy metabolites in or on the following food commodity:

Commodity	Parts per million
* * * * *	
Pea, succulent	3.0
* * * * *	

(2) Tolerances are established for the combined residues of the herbicide bentazon (3-isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide) and its metabolite 2-amino-*N*-isopropyl benzamide (AIBA) in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Eggs	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Milk	0.02
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05

* * * * *

[FR Doc. 00–5634 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300977; FRL–6492–3]

RIN 2070–AB78

Diclosulam; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of diclosulam, *N*-(2,6-dichlorophenyl)-5-ethoxy-7-fluoro[1,2,4]triazolo[1,5-*c*]pyrimidine-2-sulfonamide], in or on soybean seed and peanut nutmeat. Dow AgroSciences requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective March 8, 2000. Objections and requests for hearings, identified by docket control number OPP–300977, must be received by EPA on or before May 8, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300977 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703)

305–5697; and e-mail address: Tompkins.Jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300977. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 20, 1998 (63 FR 64484) (FRL–6030–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for a tolerance by Dow AgroSciences. This notice included a summary of the petition prepared by Dow AgroSciences, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the herbicide diclosulam, in or on soybean and peanut at 0.02 part per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of diclosulam on soybean seed and peanut nutmeat at 0.020 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by diclosulam are discussed in this unit.

In general, the toxicology studies conducted on diclosulam demonstrate that it has few or no biologically significant toxic effects at relatively low-dose levels in many animal studies. Diclosulam generally has low acute toxicity (Toxicity Category III) and is not a dermal sensitizer. The BF-564 (84.3% active ingredient (a.i.)) appeared to be slightly more irritating to the skin and eye than XDE-564 (97.6% a.i.). No significant treatment-related effects were noted in 21-day dermal studies in rabbits. Based on oral feeding studies, the primary target organs are the liver and kidney. In a subchronic rat feeding study, the primary target organ is the liver including increased relative organ weight, hepatocellular hypertrophy, and slight multifocal necrosis. Decreased body weight and kidney lesions were also noted. Liver effects were also noted in a subchronic dog study and included increased relative liver weight, centrilobular hepatocellular changes, and hepatocellular necrosis accompanied by elevated ALP, AST, and ALT. Other effects were decreased body weight, decreased food consumption, and renal changes in addition to hematological and clinical chemistry effects that were considered

secondary to the debilitated condition of the animals. In a chronic toxicity/oncogenicity study in the rat, the kidney is identified as a target organ. Changes in clinical chemistry and urinalysis parameters (indicative of altered renal tubule function) included increased creatinine, decreased urine specific gravity, increased urine volume, and decreased urinary protein concentration; also, microscopic renal tubular pathology was noted. The kidney was also a target organ in a mouse carcinogenicity study. Among the observed kidney effects were reduced vacuolization in the tubular epithelium, lower absolute and relative kidney weights, and focal dilatation with hyperplasia of the epithelial lining in the cortical tubules. Diclosulam was classified as a ''not likely human carcinogen'' based on the lack of evidence of carcinogenicity in rats or mice fed diclosulam, and the lack of evidence of mutagenic activity. Based on the results of several subchronic, chronic, and developmental reproductive toxicity studies, there was no evidence of neurotoxicity. Diclosulam is not a developmental or reproductive toxicant and there was no evidence for increased susceptibility of rat or rabbit fetuses to *in utero* exposure or rat pups to postnatal exposure to diclosulam.

B. Toxicological Endpoints

1. *Acute toxicity*. In acute toxicology studies (rat acute neurotoxicity, rat developmental toxicity, and rabbit developmental toxicity) there were no acute effects observed due to a single dose. Therefore, no acute reference dose (RfD) was selected and an acute dietary risk assessment is not required.

2. *Short- and intermediate-term toxicity*. The toxicological endpoint for short- and intermediate-term inhalation risk assessments is a maternal/developmental no observable adverse effect level (NOAEL) of 10 milligrams/kilograms/day (mg/kg/day) based on the dose-dependent increased abortions, and decreased maternal body weight gain, food consumption, and fecal output in the rabbit oral developmental study. Because this study is an oral dosing study, route-to-route extrapolation is required. A margin of exposure (MOE) of 100 or greater is adequate for occupational exposure risk assessments. A short- and intermediate-term dermal risk assessment is not required, and no short- or intermediate-term dermal toxicity endpoints were established. In a short- and intermediate-term dermal toxicology study (21-day rabbit dermal toxicity study), there was no systemic toxicity at the limit dose of 1,000 mg/kg/day.

3.*Chronic toxicity*. EPA has established a chronic RfD of 0.05 mg/kg/day NOAEL equals 5 mg/kg/day; Uncertainty Factor (UF) = 100) for use in assessing chronic dietary risk. This chronic RfD is based on the 2-year combined chronic feeding/carcinogenicity study in rats, in which the following effects were observed at the lowest observable adverse effect level (LOAEL) of 100 mg/kg/day in both sexes: statistically significant decreases in body weight gain, changes in renal tubule and kidney function parameters, and increased incidence of male kidney pelvic epithelium hyperplasia.

4. *Carcinogenicity*. In accordance with the 1996 Cancer Risk Assessment Guidelines, the Agency classified diclosulam as a ''not likely human carcinogen'' based on the lack of evidence of carcinogenicity in mice or rats. Therefore, diclosulam is not expected to pose a cancer risk.

C. Exposures and Risks

1. *From food and feed uses*. Risk assessments were conducted by EPA to assess dietary exposures from as follows:

i.*Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. In acute toxicology studies (rat acute neurotoxicity, rat developmental toxicity, and rabbit developmental toxicity) there were no acute effects observed due to a single dose. Therefore, no acute risk is expected, and an acute risk assessment is inappropriate.

ii. *Chronic exposure and risk*. The Agency used the Dietary Exposure Evaluation Model (DEEM) software for conducting a chronic (non-cancer) dietary (food) risk analysis for residues in food. The chronic dietary risk analysis was based on the assumptions of tolerance level residues (0.020 ppm for peanut nutmeat and soybean seed), 100 percent of crop treated, and the chronic population-adjusted dose (PAD) of 0.05 mg/kg/day. The resulting dietary food exposures occupy <1% of the chronic PAD for all population subgroups. These results should be viewed as conservative (health protective) risk estimates. Refinements such as use of percent crop-treated information and/or anticipated residue values would yield even lower estimates of chronic dietary exposure from residues in food. In accordance with the 1996 Cancer Risk Assessment Guidelines, EPA classified diclosulam as a ''not likely human carcinogen'' based on the lack of evidence of carcinogenicity in mice or rats. Thus, diclosulam is not expected to pose a cancer risk.

2. *From drinking water* —i. *Acute exposure and risk*. As explained above, diclosulam is not expected to pose an acute risk.

ii.*Chronic exposure and risk*. Drinking Water Levels of Comparison (DWLOCs) range from 490 to 1,700 µg/L for all population subgroups. DWLOCs were calculated based on the chronic PAD (0.05 mg/kg/day) and the chronic dietary (food only) exposure for each population subgroup. The estimated environmental concentrations (EECs) for assessing chronic aggregate dietary risk are 0.035 parts per billion (ppb) in ground water and 1.28 ppb in surface water. The chronic EECs are less than the Agency's level of comparison (the DWLOC value for each population subgroup) for diclosulam residues in drinking water as a contribution to chronic aggregate exposure.

3. *From non-dietary exposure*. There are no residential uses associated with diclosulam. Therefore, no non-dietary exposure due to residential use is expected.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether diclosulam has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, diclosulam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that diclosulam has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk*. As explained above, diclosulam is not expected to pose an acute risk.

2. *Chronic risk*. Using the theoretical maximum residue contribution (TMRC) exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diclosulam from food will utilize <1% of the PAD RfD for the U.S. population and all identified subpopulations. EPA generally has no concern for exposures below 100% of the PAD because the PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for dietary exposure to diclosulam in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. However, there are not residential uses for diclosulam and risks from dietary exposures from residues in food and water are addressed by the acute and chronic risk assessments.

4. *Aggregate cancer risk for U.S. population*. As explained above, diclosulam is not expected to pose a cancer risk.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to diclosulam residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children* —i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of diclosulam, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies*. See Unit III.A. of this notice.

iii. *Reproductive toxicity study*. See Unit III.A. of this notice.

iv. *Prenatal and postnatal sensitivity*. Based on the available data, there is no indication of increased susceptibility of rats or rabbits to *in utero* and/or to postnatal exposure to diclosulam. In the prenatal developmental toxicity studies, there was no apparent developmental toxicity in rats or rabbits at or below the maternal toxicity NOAEL values (vide supra). In the prenatal rabbit developmental toxicity study, there were dose-dependent increased late (gestational date 21–27) abortions at or above 65 mg/kg/day. The Agency considers the dose-related increased abortions as an adverse fetal effect despite the fact that the abortions were probably related to maternal toxicity, the aborted fetuses were viable, and there was no increase in intra-uterine deaths (early or late resorptions). Both the maternal and developmental NOAEL/LOAEL were considered to be 10/65 mg/kg/day based on the dose-related increased abortions. There were other maternal effects, including decreased maternal body weight gain, food consumption, and fecal output; however, there were no other treatment-related fetal or developmental effects, including gravid uterine or fetal body weights, and gross, visceral, or skeletal changes. On the other hand, in the 2–generation rat reproduction study, the parental and developmental/ offspring systemic toxicity NOAEL/LOAEL were at or above the limit dose of 1,000 mg/kg/day.

v. *Conclusion*. The toxicological data base for diclosulam is adequate to support registration and tolerances. The Ames mutagenicity test is considered to be unacceptable because the highest dose tested was not high enough. However, EPA has sufficient information concerning mutagenicity and has concluded that diclosulam is not a mutagen based on the Mouse Micronucleus Assay, CHO/HGPRT Forward Gene Mutation, Chromosomal Aberration Assay—Rat Lymphocytes tests. Also, both the acute neurotoxicity study (guideline) and the 1-year neurotoxicity study (non-guideline) are classified unacceptable pending the submission of additional information; however, these studies are not required to assess these tolerances or for registration of these uses. Exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Given the completeness of the toxicity and exposure data bases, and the lack of prenatal and postnatal sensitivity, EPA concluded that an additional safety factor to protect infants and children was not necessary and that a risk assessment using only the traditional safety factors would protect the safety of infants and children.

2. *Acute risk*. As explained above, diclosulam is not expected to pose an acute risk.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diclosulam from food will utilize <1% of the chronic PAD for infants and children. EPA generally has no concern for exposures below 100% of the chronic PAD because the PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to diclosulam in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the PAD.

4. *Short- or intermediate-term risk*. As explained above, there are no residential uses for diclosulam and thus any short-term or intermediate term risks are adequately addressed by the chronic and acute assessments.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature (metabolism) of diclosulam residues in plants and livestock is adequately understood for the purposes of these tolerances. In all the plant and animal metabolism studies submitted, the residues of

concern were parent diclosulam only. The tolerances for soybean and peanut commodities are expressed in terms of diclosulam.

B. Analytical Enforcement Methodology

The petitioner has proposed Capillary Gas Chromatography/Mass Selective Detection Methods GRM 96.01, GRM 94.19, and GRM 94.19.S1 for the enforcement of tolerances in peanut and soybean. Method validation recoveries indicate that these methods adequately recover residues of diclosulam from peanut, soybean, and their processed commodities. The validated limit of quantitation (LOQ) is 0.01 ppm for all commodities and the limit of detection (LOD) was estimated to be 0.003 ppm for all matrices. Adequate independent method validation data have been submitted for this method.

C. Magnitude of Residues

The submitted soybean and peanut field trial data are adequate. The available residue data support the proposed tolerance at 0.020 ppm for residues of diclosulam in/on soybean seed. Residues were nondetectable (<0.003 ppm) in/on all 81 samples of soybeans treated at 1–1.5x. Diclosulam residues were also nondetectable (<0.003 ppm) in/on seed harvested from applications at exaggerated rates (5 3 and 8x). The processing data indicate that residues of diclosulam do not concentrate in soybean processed commodities. The proposed label includes a restriction against grazing treated areas or harvesting forage and hay from treated areas; therefore, tolerances for residues in/on soybean forage and hay are not required at this time.

In peanuts, the available residue data support the proposed tolerance at 0.020 ppm for residues of diclosulam in/on peanut nutmeats. Residues were nondetectable (<0.003 ppm) in/on all 22 samples of nutmeats treated at 1.4x. Diclosulam residues were also nondetectable (<0.003 ppm) in/on nut meats harvested from applications at exaggerated rates (5 3 and 8x). The proposed label includes a restriction against grazing treated areas or harvesting forage and hay from treated areas. As all peanut nutmeat samples from the RAC field trials and exaggerated rate trials showed residues of diclosulam <0.003 ppm (<LOD), no tolerances for residues of diclosulam in peanut processed commodities are required. No tolerance for residues in/on peanut hay is needed since the proposed label includes a restriction against grazing treated areas or harvesting forage and hay from treated areas.

D. International Residue Limits

There are no established or proposed Codex, Canadian or Mexican limits for residues of diclosulam in/on plant or animal commodities.

E. Rotational Crop Restrictions

The petitioner has proposed the following plantback restrictions for rotated crops: 4 months for wheat and barley; 6 months for oat and rye; 9 months for cotton, soybeans, and peanuts; 18 months for corn, rice, tobacco, and sorghum; and 30 months for all other crops due to phytotoxicity. EPA has determined that these plantback restrictions are adequate.

V. Conclusion

Therefore, the tolerance is established for residues of diclosulam in soybean seed and peanut nutmeat at 0.020 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300977 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 8, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300977, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.543 is added to read as follows:

§ 180.543 Diclosulam; tolerances for residues.

(a) *General*. Tolerances are established for residues of the herbicide diclosulam [*N*-(2,6-dichlorophenyl)-5-ethoxy-7-fluoro[1,2,4] triazolo[1,5-*c*]pyrimidine-2-sulfonamide] in or on the following raw agricultural commodities as follows:

Commodity	Parts per million
Peanut nutmeat	0.020
Soybean seed	0.020

(b) *Section 18 emergency exemptions*. [Reserved]

(c) *Tolerances with regional registrations*. [Reserved]

(d) *Indirect or inadvertent residues*. [Reserved]

[FR Doc. 00–5635 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45 and 97–21; FCC 00–65]

Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service amends a procedural rule regarding the time period during which the Commission must issue a written decision in response to a request for review of a decision issued by the Schools and Libraries Division of the Universal Service Administrative Company.

DATES: Effective March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Linda Chang, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission's Order in CC Docket Nos. 96–45 and 97–21 released on March 1, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW, Washington, DC, 20554.

1. In this Order, we amend a procedural rule regarding the time period during which the Commission must issue a written decision in response to a request for review of a decision issued by the Schools and Libraries Division of the Universal Service Administrative Company (USAC or Administrator). Section 54.724 of the Commission's rules provides that, when a request for review is properly before the Common Carrier Bureau (Bureau) or the Commission, a written decision must be issued within ninety days unless the time period for taking action on the request for review is extended. In this Order, we amend that rule to make clear that the Bureau may extend, for up to ninety days, the time period for taking action on a request for review of an Administrator's decision that is pending before the Bureau or the Commission pursuant to § 54.724 of the Commission's rules. We also clarify that the Commission may extend the time period for taking action on a pending request for review of an Administrator's decision that is before either the Bureau or the Commission, but the Commission is not limited to a maximum 90-day extension period. We believe this procedural amendment will facilitate our administrative processes. Accordingly, as set forth, we amend § 54.724 of the Commission's rules to clarify that the Bureau may extend, for up to ninety days, the time period for taking action on requests for review of the Administrator's decisions that are before either the Bureau or the Commission.

Ordering Clauses

2. The authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, this Order is adopted.

3. The authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, is revised as set forth.

4. This action is exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. section 553, because it affects only rules of agency procedure or practice.

5. Because this action involves an internal procedural matter not affecting the substantive rights of any entity, the rule change set forth is effective immediately upon publication in the **Federal Register**.

List of Subjects 47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Section 54.724 is revised to read as follows:

§ 54.724 Time periods for Commission approval of Administrator decisions.

(a) If the Common Carrier Bureau does not take action within ninety (90) days upon appeals that are properly before it, a decision issued by the Administrator shall be deemed approved. The Commission may extend the time period for taking action on a request for review of an Administrator decision. The Common Carrier Bureau also may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days.

(b) The Commission shall issue a written decision in response to a request for review of an Administrator decision that involves novel questions of fact, law or policy within ninety (90) days. The Commission may extend the time period for taking action on the request for review of an Administrator decision. The Common Carrier Bureau also may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days.

[FR Doc. 00–5479 Filed 3–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–264; FCC 00–12]

Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992; Horizontal Ownership Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration of stay.

SUMMARY: This document announces that, on its own motion, the Commission reconsiders the conditions under which it will lift its voluntarily-imposed stay of the horizontal ownership rules, 47 CFR 76.503, adopted on October 8, 1999.

DATES: 47 CFR 76.503 (a) through (f) as revised and stayed at 64 FR 67198 (Dec. 1, 1999) continue to be stayed until the U.S. Court of Appeals for the District of Columbia Circuit issues a decision upholding the constitutionality of Section 613(f)(1)(A) of the Federal Communications Act, as amended. The FCC will publish a document in the **Federal Register** announcing the action of the Court and the date affected parties must comply with the regulations.

FOR FURTHER INFORMATION CONTACT: Darryl Cooper at (202) 418–7200 or via Internet at *dacooper@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Commission's Order on Reconsideration* (Order) in MM Docket No. 92–264; FCC 00–12, adopted January 12, 2000, and released January 19, 2000. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554, or

may be purchased from the Commission's copy contractor, International Transcription Service (''ITS''), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at *http://www.fcc.gov/csb/*. For copies in alternative formats such as Braille, audio cassette or large print, please contact Sheila Ray at ITS.

Synopsis of Order on Reconsideration

1. On its own motion, the Commission reconsiders the conditions under which it will lift its voluntarily-imposed stay of the horizontal ownership rules, 47 CFR 76.503. These rules were adopted and stayed in part on October 8, 1999 at 64 FR 67198 (Dec. 1, 1999).

2. In the *Second Order on Reconsideration* in this proceeding, the Commission continued its stay of the effective date of the horizontal ownership rules pending a decision by the U.S. Court of Appeals for the District of Columbia Circuit on challenges to the horizontal ownership rules and Section 613(f)(1)(A) of the Communications Act, as amended, 47 U.S.C. 533(f)(1)(A). The Commission decided that parties exceeding the horizontal limit must come into compliance with the rules within 60 days of a judicial decision upholding the rules and the statute.

3. The statute was challenged in the U.S. District Court, and the rules were challenged in the U.S. Court of Appeals for the District of Columbia Circuit. In 1993, the district court held the statute unconstitutional. The district court also decided that, because ''there is substantial ground for difference of opinion'' as to the constitutionality of the underlying statute, it would stay its proceedings and the issuance of any relief to the plaintiffs pending appeal. In August 1996, the D.C. Circuit Court consolidated the appeal of the district court decision and the D.C. Circuit Court challenge. The D.C. Circuit Court held the consolidated proceedings in abeyance pending the Commission's decision on the petitions for reconsideration of the rules. Once the Commission issued the *Second Order on Reconsideration,* the D.C. Circuit Court lifted its stay on its consideration of the consolidated proceedings. The appeal is currently pending.

4. In the *Third Report and Order* in this proceeding, the Commission again declined to lift its stay of the horizontal ownership rules. In fact, the Commission, on its own motion, held that the horizontal ownership rules will become effective immediately upon the issuance of a decision upholding the rules and the statute, and that affected parties must come into compliance within 180 days after the court issues its mandate. The Commission reasoned that 180 days, rather than 60 days, was a more reasonable amount of time for affected parties to dispose of property necessary to come into compliance with the rules.

5. On November 2, 1999, the D.C. Circuit issued an order deconsolidating the challenge to the rules and the statute. The court allowed the challenge to the statute to proceed, but held the challenge to the rules in abeyance.

6. The Commission originally stayed its rules in deference to the district court's decision and to give the D.C. Circuit Court an opportunity to review that decision. Now that the challenge to the rules has been separated from the challenge to statute, it is no longer necessary to maintain the stay while the challenge to the rules remains in abeyance or otherwise under consideration by the court. Instead, the Commission holds that the horizontal ownership rules will become effective upon the issuance of a decision upholding the statute. Affected parties must come into compliance with the rules within 180 days following the issuance of that decision.

7. The Commission has decided to use the date on which the court decision issues, not the date on which the mandate issues, as the triggering event for affected parties to come into compliance with the rules. Thus, affected parties are expected to come into compliance with these rules within 180 days after the issuance of a court decision upholding the statute. The Commission finds that requiring affected parties to come into compliance with its rules within 180 after the issuance of a court decision provides more certainty to the public and affected parties. There is potentially a wide variance between the date a decision issues and the date the mandate issues. The Commission finds that the issuance date of the court decision is a superior benchmark for lifting the stay and requiring parties to come into compliance with the rules.

8. *Accordingly, it is Ordered* that the Commission's horizontal ownership rules are stayed until the U.S. Court of Appeals for the D.C. Circuit issues a decision upholding the constitutionality of Section 613(f)(1)(A) of the Act, as amended, 47 U.S.C. 533(f)(1)(A). Parties not in compliance with the rules on the date the U.S. Court of Appeals for the D.C. Circuit issues such a decision must come into compliance within 180 days.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5410 Filed 3–7–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–7235–01; I.D. 030300A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast subzone. This closure is necessary to protect the overfished Gulf group king mackerel resource.

DATES: Effective 12:01 a.m., local time, March 6, 2000, through June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on February 19, 1998 (63 FR 8353), NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the Florida west coast subzone of 1.17 million lb (0.53 million kg). That quota was further divided into two equal quotas of 585,000 lb (265,352 kg) for

vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined that the commercial quota of 585,000 lb (265,352 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the Florida west coast subzone was reached on March 5, 2000. Accordingly, the commercial fishery for king mackerel for such vessels in the Florida west coast subzone is closed effective 12:01 a.m., local time, March 6, 2000, through June 30, 2000, the end of the fishing year.

The Florida west coast subzone extends from 87°31'06'' W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Miami-Dade/Monroe County, FL, boundary) through March 31, 2000; and (2) 25°48' N. lat. (due west the Monroe/Collier County, FL, boundary) from April 1, 2000, through October 31, 2000.

NMFS previously determined that the commercial quota for king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on August 25, 1999 (64 FR 46596, August 26, 1999). Subsequently, NMFS determined that the commercial quota of king mackerel for vessels using run-around gillnets in the Florida west coast subzone of the eastern zone of the Gulf of Mexico was reached and closed that segment of the fishery on February 15, 2000 (65 FR 8067; February 17, 2000). Thus, with this closure, all commercial fisheries for Gulf group king mackerel in the EEZ are closed from the U.S./Mexico border through the Florida west coast subzone through June 30, 2000.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. Note, however, that the bag limit for an operator or crew member of a charter vessel or headboat is zero. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The closure must be implemented immediately to prevent an overrun of the commercial quota (50 CFR 622.42(c)(1)) of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Overruns could potentially lead to further overfishing and unnecessary delays in rebuilding this overfished resource. Any delay in implementing this action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5618 Filed 3–3–00; 4:47 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 030100D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 4, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area was established as 24,538 metric tons (mt), by the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 24,238 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the 2000 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 2, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5592 Filed 3–3–00; 1:15 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 030200B]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock sole/Flathead sole/''Other flatfish'' Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal apportionment of the 2000 Pacific halibut bycatch allowance of halibut specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 4, 2000, until 1200 hrs, A.l.t., April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone 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-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The halibut bycatch mortality first seasonal apportionment specified for the BSAI trawl rock sole/flathead sole/''other flatfish'' fishery category, which is defined at § 679.21(e)(3)(iv)(B)(*2*), was established as 488 metric tons by the Final 2000 Harvest Specifications of Groundfish (65 FR 8282, February 18, 2000).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal apportionment of the 2000 halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the first seasonal apportionment of the 2000 halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest. The fleet will soon take the apportionment. Further delay would only result in the first seasonal apportionment of the 2000 halibut bycatch allowance being exceeded. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5620 Filed 3–3–00; 4:47 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 030200A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 4, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Pacific cod TAC apportioned to

vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area was established as 14,850 metric tons (mt), by the Final 2000 Harvest Specifications of Groundfish for the GOA (8298 FR 65, February 18, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 14,350 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the final 2000 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5619 Filed 3–3–00; 4:47 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 46
Wednesday, March 8, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–99–003]

RIN 0581–AB57

Revision of User Fees for 2000 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to maintain user fees for cotton producers for 2000 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 1999. This is in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1999 user fee for this classification service was $1.35 per bale. This proposal would maintain the fee for the 2000 crop at $1.35 per bale. The proposed fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

DATES: Comments must be received by April 7, 2000.

ADDRESSES: Comments and inquiries should be addressed to: Cotton Programs, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Rm. 2641–South Building, 14th & Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, Cotton Program, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. 202–720–2145.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and it has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Continuing the user fee at the 1999 crop level will not significantly affect small businesses as defined under the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services (the 1999 user fee for classification services was $1.35 per bale; the fee for the 2000 crop would be maintained at $1.35 per bale; the 2000 crop is estimated at 17,945,000 bales);

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 1999 crop, 16,409,650 bales were produced, and virtually all of them were submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 1998 crop of 65.3 cents per pound, 500 pound bales of cotton are worth an average of $326.50 each. The proposed user fee for classification services, $1.35 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 2000, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.35 per bale during the 1999 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision.

This proposed rule establishes the user fee charged to producers for HVI classification at $1.35 per bale during the 2000 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1999. Therefore, the 2000 producer's user fee for classification service is based on the 1999 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1999 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.14 per bale. An increase of one and thirty-nine hundredths percent, or three cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.14 would result in a 2000 base fee of $2.17 per bale. The formula in the Act

provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2000 crop is estimated at 17,855,275 bales. The 2000 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 33 cents per bale reduction and was subtracted from the 2000 base fee of $2.17 per bale, resulting in a fee of $1.84 per bale.

With a fee of $1.84 per bale, the projected operating reserve would be 49.77 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.84 must be reduced by 49 cents per bale, to $1.35 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 2000 season fee at $1.35 per bale.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the HVI classification fee at $1.35 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents requesting classification data provided on computer punched cards will continue to be charged the fee of 10 cents per card in § 28.910(a) to reflect the costs of providing this service. Requests for punch card classification data represented less than 1.0 percent of the total bales classed from the 1999 crop, down from 2.6 percent in 1997. Growers or their designated agents receiving classification data by methods other than computer punched cards would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at five cents per bale, and it would be applicable even if the same method was requested. However, if computer punched cards were requested, a fee of ten cents per card would be charged. The fee in § 28.910(b) for an owner receiving classification data from the central database would remain at five cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be maintained at $1.35 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

A thirty-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed changes, if adopted, would be made effective July 1, 2000, as provided by the Cotton Statistics and Estimates Act.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is proposed to be amended as follows:

PART 28—[Amended]

1. The authority citation for 7 CFR Part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471—476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.35 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.35 per bale.

* * * * *

Dated: March 6, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–5752 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–00–002]

2000 Proposed Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This adjustment is required by this regulation on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

DATES: Comments must be received on or before April 7, 2000.

ADDRESSES: Comments may be mailed to USDA, AMS, Cotton Program, STOP 0224, 1400 Independence Avenue, SW, Washington, DC 20250–0224. All comments received will be available for public inspection at this address during the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, (202) 720–2259.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed 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.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the

order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This proposed rule would affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This proposed rule would lower the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment would be lowered, the decrease is small and will not significantly affect small businesses.

The current assessment on imported cotton is $0.011397 per kilogram of imported cotton. The proposed assessment is $0.009833, a decrease of $0.001564 or a 13.72 percent decrease from the current assessment. From January through December 1999 approximately $23 million was collected at the $0.011397 per kilogram rate. Should the volume of cotton products imported into the U.S. remain at the same level in 2000, one could expect the decreased assessment to generate approximately $19.8 million or a 13.72 percent decrease from 1999.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) the assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991 and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This proposed rule would decrease the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510 (b)(2)). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms of cotton.

Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency has adopted the practice of assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is done so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products remain similar. The source for the average price statistic is ''Agricultural Prices'', a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton in the prior calendar year.

The current value of imported cotton as published in the **Federal Register** (64 FR 30236) on June 7, 1999, for the purpose of calculating supplemental assessments on imported cotton is $1.3977 per kilogram. This number was calculated using the annual weighted average price received by farmers for Upland cotton during the calendar year 1998 which was $0.634 per pound and multiplying by the conversion factor 2.2046. Using the Average Weighted Price Received by U.S. farmers for Upland cotton for the calendar year 1999, which is $0.492 per pound, the new value of imported cotton is $1.0847 per kilogram. The proposed value is $0.313 per kilogram less than the previous value.

An example of the complete assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar Per Bale Assessment Converted to Kilograms

A 500 pound bale equals 226.8 kg. (500×.453597).

$1 per bale assessment equals $0.002000 per pound (1÷500) or $0.004409 per kg. (1÷226.8)

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms.

The 1999 calendar year weighted average price received by producers for Upland cotton is $0.492 per pound or $1.0847 per kg. (0.492 x 2.2046) = 1.0847.

Five tenths of one percent of the average price in kg. equals $0.005424 per kg. (1.0847 x .005).

Total Assessment

The total assessment per kilogram of raw cotton in obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.005424 per kg. which equals $0.009833 per kg.

The current assessment on imported cotton is $0.011397 per kilogram of imported cotton. The proposed assessment is $0.009833, a decrease of $0.001564 per kilogram. This decrease reflects the decrease in the Average Weighted Price of Upland Cotton Received by U.S. Farmers during the period January through December 1999.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the

right hand column of the Import Assessment Table 1205.510 (b)(3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

A thirty day comment period is provided to comment on the changes to the Cotton Board Rules and Regulations proposed herein. This period is deemed appropriate because this proposal would lower the assessments paid by importers under the Cotton Research and Promotion Order. Accordingly, the change proposed in this rule, if adopted, should be implemented as soon as possible.

List of Subjects 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1205 be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $0.9833 per kilogram.

(3) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5201000500	0	0.9833
5201001200	0	0.9833
5201001400	0	0.9833
5201001800	0	0.9833
5201002200	0	0.9833
5201002400	0	0.9833
5201002800	0	0.9833
5201003400	0	0.9833
5201003800	0	0.9833
5204110000	1.1111	1.0925
5204200000	1.1111	1.0925
5205111000	1.1111	1.0925
5205112000	1.1111	1.0925
5205121000	1.1111	1.0925
5205122000	1.1111	1.0925
5205131000	1.1111	1.0925
5205132000	1.1111	1.0925
5205141000	1.1111	1.0925
5205210020	1.1111	1.0925
5205210090	1.1111	1.0925
5205220020	1.1111	1.0925
5205220090	1.1111	1.0925
5205230020	1.1111	1.0925
5205230090	1.1111	1.0925
5205240020	1.1111	1.0925
5205240090	1.1111	1.0925
5205310000	1.1111	1.0925
5205320000	1.1111	1.0925
5205330000	1.1111	1.0925
5205340000	1.1111	1.0925
5205410020	1.1111	1.0925
5205410090	1.1111	1.0925
5205420020	1.1111	1.0925
5205420090	1.1111	1.0925
5205440020	1.1111	1.0925
5205440090	1.1111	1.0925
5206120000	0.5556	0.5463
5206130000	0.5556	0.5463
5206140000	0.5556	0.5463
5206220000	0.5556	0.5463
5206230000	0.5556	0.5463
5206240000	0.5556	0.5463
5206310000	0.5556	0.5463
5207100000	1.1111	1.0925
5207900000	0.5556	0.5463
5208112020	1.1455	1.1264
5208112040	1.1455	1.1264
5208112090	1.1455	1.1264
5208114020	1.1455	1.1264
5208114060	1.1455	1.1264
5208114090	1.1455	1.1264
5208118090	1.1455	1.1264
5208124020	1.1455	1.1264
5208124040	1.1455	1.1264
5208124090	1.1455	1.1264
5208126020	1.1455	1.1264
5208126040	1.1455	1.1264
5208126060	1.1455	1.1264
5208126090	1.1455	1.1264
5208128020	1.1455	1.1264
5208128090	1.1455	1.1264
5208130000	1.1455	1.1264
5208192020	1.1455	1.1264
5208192090	1.1455	1.1264
5208194020	1.1455	1.1264
5208194090	1.1455	1.1264
5208196020	1.1455	1.1264
5208196090	1.1455	1.1264
5208224040	1.1455	1.1264
5208224090	1.1455	1.1264
5208226020	1.1455	1.1264
5208226060	1.1455	1.1264
5208228020	1.1455	1.1264
5208230000	1.1455	1.1264
5208292020	1.1455	1.1264
5208292090	1.1455	1.1264
5208294090	1.1455	1.1264
5208296090	1.1455	1.1264
5208298020	1.1455	1.1264
5208312000	1.1455	1.1264
5208321000	1.1455	1.1264
5208323020	1.1455	1.1264
5208323040	1.1455	1.1264
5208323090	1.1455	1.1264
5208324020	1.1455	1.1264
5208324040	1.1455	1.1264
5208325020	1.1455	1.1264
5208330000	1.1455	1.1264
5208392020	1.1455	1.1264
5208392090	1.1455	1.1264
5208394090	1.1455	1.1264
5208396090	1.1455	1.1264
5208398020	1.1455	1.1264
5208412000	1.1455	1.1264
5208416000	1.1455	1.1264
5208418000	1.1455	1.1264
5208421000	1.1455	1.1264
5208423000	1.1455	1.1264
5208424000	1.1455	1.1264
5208425000	1.1455	1.1264
5208430000	1.1455	1.1264
5208492000	1.1455	1.1264
5208494020	1.1455	1.1264
5208494090	1.1455	1.1264
5208496010	1.1455	1.1264
5208496090	1.1455	1.1264
5208498090	1.1455	1.1264
5208512000	1.1455	1.1264
5208516060	1.1455	1.1264
5208518090	1.1455	1.1264
5208523020	1.1455	1.1264
5208523045	1.1455	1.1264
5208523090	1.1455	1.1264
5208524020	1.1455	1.1264
5208524045	1.1455	1.1264
5208524065	1.1455	1.1264
5208525020	1.1455	1.1264
5208530000	1.1455	1.1264
5208592025	1.1455	1.1264
5208592095	1.1455	1.1264
5208594090	1.1455	1.1264
5208596090	1.1455	1.1264
5209110020	1.1455	1.1264
5209110035	1.1455	1.1264
5209110090	1.1455	1.1264
5209120020	1.1455	1.1264
5209120040	1.1455	1.1264
5209190020	1.1455	1.1264
5209190040	1.1455	1.1264
5209190060	1.1455	1.1264
5209190090	1.1455	1.1264
5209210090	1.1455	1.1264
5209220020	1.1455	1.1264
5209220040	1.1455	1.1264
5209290040	1.1455	1.1264
5209290090	1.1455	1.1264
5209313000	1.1455	1.1264
5209316020	1.1455	1.1264
5209316035	1.1455	1.1264
5209316050	1.1455	1.1264
5209316090	1.1455	1.1264
5209320020	1.1455	1.1264
5209320040	1.1455	1.1264
5209390020	1.1455	1.1264
5209390040	1.1455	1.1264
5209390060	1.1455	1.1264

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5209390080	1.1455	1.1264
5209390090	1.1455	1.1264
5209413000	1.1455	1.1264
5209416020	1.1455	1.1264
5209416040	1.1455	1.1264
5209420020	1.0309	1.0137
5209420040	1.0309	1.0137
5209430030	1.1455	1.1264
5209430050	1.1455	1.1264
5209490020	1.1455	1.1264
5209490090	1.1455	1.1264
5209516035	1.1455	1.1264
5209516050	1.1455	1.1264
5209520020	1.1455	1.1264
5209590025	1.1455	1.1264
5209590040	1.1455	1.1264
5209590090	1.1455	1.1264
5210114020	0.6873	0.6758
5210114040	0.6873	0.6758
5210116020	0.6873	0.6758
5210116040	0.6873	0.6758
5210116060	0.6873	0.6758
5210118020	0.6873	0.6758
5210120000	0.6873	0.6758
5210192090	0.6873	0.6758
5210214040	0.6873	0.6758
5210216020	0.6873	0.6758
5210216060	0.6873	0.6758
5210218020	0.6873	0.6758
5210314020	0.6873	0.6758
5210314040	0.6873	0.6758
5210316020	0.6873	0.6758
5210318020	0.6873	0.6758
5210414000	0.6873	0.6758
5210416000	0.6873	0.6758
5210418000	0.6873	0.6758
5210498090	0.6873	0.6758
5210514040	0.6873	0.6758
5210516020	0.6873	0.6758
5210516040	0.6873	0.6758
5210516060	0.6873	0.6758
5211110090	0.6873	0.6758
5211120020	0.6873	0.6758
5211190020	0.6873	0.6758
5211190060	0.6873	0.6758
5211210025	0.6873	0.6758
5211210035	0.4165	0.4095
5211210050	0.6873	0.6758
5211290090	0.6873	0.6758
5211320020	0.6873	0.6758
5211390040	0.6873	0.6758
5211390060	0.6873	0.6758
5211490020	0.6873	0.6758
5211490090	0.6873	0.6758
5211590025	0.6873	0.6758
5212146090	0.9164	0.9011
5212156020	0.9164	0.9011
5212216090	0.9164	0.9011
5509530030	0.5556	0.5463
5509530060	0.5556	0.5463
5513110020	0.4009	0.3942
5513110040	0.4009	0.3942
5513110060	0.4009	0.3942
5513110090	0.4009	0.3942
5513120000	0.4009	0.3942
5513130020	0.4009	0.3942
5513210020	0.4009	0.3942
5513310000	0.4009	0.3942
5514120020	0.4009	0.3942

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5516420060	0.4009	0.3942
5516910060	0.4009	0.3942
5516930090	0.4009	0.3942
5601210010	1.1455	1.1264
5601210090	1.1455	1.1264
5601300000	1.1455	1.1264
5602109090	0.5727	0.5631
5602290000	1.1455	1.1264
5602906000	0.526	0.5172
5604900000	0.5556	0.5463
5607902000	0.8889	0.8741
5608901000	1.1111	1.0925
5608902300	1.1111	1.0925
5609001000	1.1111	1.0925
5609004000	0.5556	0.5463
5701104000	0.0556	0.055
5701109000	0.1111	0.1092
5701901010	1.0444	1.027
5702109020	1.1	1.0816
5702312000	0.0778	0.077
5702411000	0.0722	0.071
5702412000	0.0778	0.077
5702421000	0.0778	0.077
5702913000	0.0889	0.087
5702991010	1.1111	1.0925
5702991090	1.1111	1.0925
5703900000	0.4489	0.4414
5801210000	1.1455	1.1264
5801230000	1.1455	1.1264
5801250010	1.1455	1.1264
5801250020	1.1455	1.1264
5801260020	1.1455	1.1264
5802190000	1.1455	1.1264
5802300030	0.5727	0.5631
5804291000	1.1455	1.1264
5806200010	0.3534	0.3475
5806200090	0.3534	0.3475
5806310000	1.1455	1.1264
5806400000	0.4296	0.4224
5808107000	0.5727	0.5631
5808900010	0.5727	0.5631
5811002000	1.1455	1.1264
6001106000	1.1455	1.1264
6001210000	0.8591	0.8448
6001220000	0.2864	0.2816
6001910010	0.8591	0.8448
6001910020	0.8591	0.8448
6001920020	0.2864	0.2816
6001920030	0.2864	0.2816
6001920040	0.2864	0.2816
6002203000	0.8681	0.8536
6002206000	0.2894	0.2846
6002420000	0.8681	0.8536
6002430010	0.2894	0.2846
6002430080	0.2894	0.2846
6002921000	1.1574	1.1381
6002930040	0.1157	0.1138
6002930080	0.1157	0.1138
6101200010	1.0094	0.9925
6101200020	1.0094	0.9925
6102200010	1.0094	0.9925
6102200020	1.0094	0.9925
6103421020	0.8806	0.8659
6103421040	0.8806	0.8659
6103421050	0.8806	0.8659
6103421070	0.8806	0.8659
6103431520	0.2516	0.2474
6103431540	0.2516	0.2474
6103431550	0.2516	0.2474

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6103431570	0.2516	0.2474
6104220040	0.9002	0.8852
6104220060	0.9002	0.8852
6104320000	0.9207	0.9053
6104420010	0.9002	0.8852
6104420020	0.9002	0.8852
6104520010	0.9312	0.9156
6104520020	0.9312	0.9156
6104622006	0.8806	0.8659
6104622011	0.8806	0.8659
6104622016	0.8806	0.8659
6104622021	0.8806	0.8659
6104622026	0.8806	0.8659
6104622028	0.8806	0.8659
6104622030	0.8806	0.8659
6104622060	0.8806	0.8659
6104632006	0.3774	0.3711
6104632011	0.3774	0.3711
6104632026	0.3774	0.3711
6104632028	0.3774	0.3711
6104632030	0.3774	0.3711
6104632060	0.3774	0.3711
6104692030	0.3858	0.3794
6105100010	0.985	0.9686
6105100020	0.985	0.9686
6105100030	0.985	0.9686
6105202010	0.3078	0.3027
6105202030	0.3078	0.3027
6106100010	0.985	0.9686
6106100020	0.985	0.9686
6106100030	0.985	0.9686
6106202010	0.3078	0.3027
6106202030	0.3078	0.3027
6107110010	1.1322	1.1133
6107110020	1.1322	1.1133
6107120010	0.5032	0.4948
6107210010	0.8806	0.8659
6107220015	0.3774	0.3711
6107220025	0.3774	0.3711
6107910040	1.2581	1.2371
6108210010	1.2445	1.2237
6108210020	1.2445	1.2237
6108310010	1.1201	1.1014
6108310020	1.1201	1.1014
6108320010	0.2489	0.2447
6108320015	0.2489	0.2447
6108320025	0.2489	0.2447
6108910005	1.2445	1.2237
6108910015	1.2445	1.2237
6108910025	1.2445	1.2237
6108910030	1.2445	1.2237
6108920030	0.2489	0.2447
6109100005	0.9956	0.979
6109100007	0.9956	0.979
6109100009	0.9956	0.979
6109100012	0.9956	0.979
6109100014	0.9956	0.979
6109100018	0.9956	0.979
6109100023	0.9956	0.979
6109100027	0.9956	0.979
6109100037	0.9956	0.979
6109100040	0.9956	0.979
6109100045	0.9956	0.979
6109100060	0.9956	0.979
6109100065	0.9956	0.979
6109100070	0.9956	0.979
6109901007	0.3111	0.3059
6109901009	0.3111	0.3059
6109901049	0.3111	0.3059

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6109901050	0.3111	0.3059
6109901060	0.3111	0.3059
6109901065	0.3111	0.3059
6109901090	0.3111	0.3059
6110202005	1.1837	1.1639
6110202010	1.1837	1.1639
6110202015	1.1837	1.1639
6110202020	1.1837	1.1639
6110202025	1.1837	1.1639
6110202030	1.1837	1.1639
6110202035	1.1837	1.1639
6110202040	1.1574	1.1381
6110202045	1.1574	1.1381
6110202065	1.1574	1.1381
6110202075	1.1574	1.1381
6110909022	0.263	0.2586
6110909024	0.263	0.2586
6110909030	0.3946	0.388
6110909040	0.263	0.2586
6110909042	0.263	0.2586
6111201000	1.2581	1.2371
6111202000	1.2581	1.2371
6111203000	1.0064	0.9896
6111205000	1.0064	0.9896
6111206010	1.0064	0.9896
6111206020	1.0064	0.9896
6111206030	1.0064	0.9896
6111206040	1.0064	0.9896
6111305020	0.2516	0.2474
6111305040	0.2516	0.2474
6112110050	0.7548	0.7422
6112120010	0.2516	0.2474
6112120030	0.2516	0.2474
6112120040	0.2516	0.2474
6112120050	0.2516	0.2474
6112120060	0.2516	0.2474
6112390010	1.1322	1.1133
6112490010	0.9435	0.9277
6114200005	0.9002	0.8852
6114200010	0.9002	0.8852
6114200015	0.9002	0.8852
6114200020	1.286	1.2645
6114200040	0.9002	0.8852
6114200046	0.9002	0.8852
6114200052	0.9002	0.8852
6114200060	0.9002	0.8852
6114301010	0.2572	0.2529
6114301020	0.2572	0.2529
6114303030	0.2572	0.2529
6115198010	1.0417	1.0243
6115929000	1.0417	1.0243
6115936020	0.2315	0.2276
6116101300	0.3655	0.3594
6116101720	0.8528	0.8386
6116926420	1.0965	1.0782
6116926430	1.2183	1.198
6116926440	1.0965	1.0782
6116928800	1.0965	1.0782
6117809510	0.9747	0.9584
6117809540	0.3655	0.3594
6201121000	0.948	0.9322
6201122010	0.8953	0.8803
6201122050	0.6847	0.6733
6201122060	0.6847	0.6733
6201134030	0.2633	0.2589
6201921000	0.9267	0.9112
6201921500	1.1583	1.139
6201922010	1.0296	1.0124
6201922021	1.2871	1.2656

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6201922031	1.2871	1.2656
6201922041	1.2871	1.2656
6201922051	1.0296	1.0124
6201922061	1.0296	1.0124
6201931000	0.3089	0.3037
6201933511	0.2574	0.2531
6201933521	0.2574	0.2531
6201999060	0.2574	0.2531
6202121000	0.9372	0.9215
6202122010	1.1064	1.0879
6202122025	1.3017	1.28
6202122050	0.8461	0.832
6202122060	0.8461	0.832
6202134005	0.2664	0.262
6202134020	0.333	0.3274
6202921000	1.0413	1.0239
6202921500	1.0413	1.0239
6202922026	1.3017	1.28
6202922061	1.0413	1.0239
6202922071	1.0413	1.0239
6202931000	0.3124	0.3072
6202935011	0.2603	0.256
6202935021	0.2603	0.256
6203122010	0.1302	0.128
6203221000	1.3017	1.28
6203322010	1.2366	1.2159
6203322040	1.2366	1.2159
6203332010	0.1302	0.128
6203392010	1.1715	1.1519
6203399060	0.2603	0.256
6203422010	0.9961	0.9795
6203422025	0.9961	0.9795
6203422050	0.9961	0.9795
6203422090	0.9961	0.9795
6203424005	1.2451	1.2243
6203424010	1.2451	1.2243
6203424015	0.9961	0.9795
6203424020	1.2451	1.2243
6203424025	1.2451	1.2243
6203424030	1.2451	1.2243
6203424035	1.2451	1.2243
6203424040	0.9961	0.9795
6203424045	0.9961	0.9795
6203424050	0.9238	0.9084
6203424055	0.9238	0.9084
6203424060	0.9238	0.9084
6203431500	0.1245	0.1224
6203434010	0.1232	0.1211
6203434020	0.1232	0.1211
6203434030	0.1232	0.1211
6203434040	0.1232	0.1211
6203498045	0.249	0.2448
6204132010	0.1302	0.128
6204192000	0.1302	0.128
6204198090	0.2603	0.256
6204221000	1.3017	1.28
6204223030	1.0413	1.0239
6204223040	1.0413	1.0239
6204223050	1.0413	1.0239
6204223060	1.0413	1.0239
6204223065	1.0413	1.0239
6204292040	0.3254	0.32
6204322010	1.2366	1.2159
6204322030	1.0413	1.0239
6204322040	1.0413	1.0239
6204423010	1.2728	1.2515
6204423030	0.9546	0.9387
6204423040	0.9546	0.9387
6204423050	0.9546	0.9387

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6204423060	0.9546	0.9387
6204522010	1.2654	1.2443
6204522030	1.2654	1.2443
6204522040	1.2654	1.2443
6204522070	1.0656	1.0478
6204522080	1.0656	1.0478
6204533010	0.2664	0.262
6204594060	0.2664	0.262
6204622010	0.9961	0.9795
6204622025	0.9961	0.9795
6204622050	0.9961	0.9795
6204624005	1.2451	1.2243
6204624010	1.2451	1.2243
6204624020	0.9961	0.9795
6204624025	1.2451	1.2243
6204624030	1.2451	1.2243
6204624035	1.2451	1.2243
6204624040	1.2451	1.2243
6204624045	0.9961	0.9795
6204624050	0.9961	0.9795
6204624055	0.9854	0.9689
6204624060	0.9854	0.9689
6204624065	0.9854	0.9689
6204633510	0.2546	0.2503
6204633530	0.2546	0.2503
6204633532	0.2437	0.2396
6204633540	0.2437	0.2396
6204692510	0.249	0.2448
6204692540	0.2437	0.2396
6204699044	0.249	0.2448
6204699046	0.249	0.2448
6204699050	0.249	0.2448
6205202015	0.9961	0.9795
6205202020	0.9961	0.9795
6205202025	0.9961	0.9795
6205202030	0.9961	0.9795
6205202035	1.1206	1.1019
6205202046	0.9961	0.9795
6205202050	0.9961	0.9795
6205202060	0.9961	0.9795
6205202065	0.9961	0.9795
6205202070	0.9961	0.9795
6205202075	0.9961	0.9795
6205302010	0.3113	0.3061
6205302030	0.3113	0.3061
6205302040	0.3113	0.3061
6205302050	0.3113	0.3061
6205302070	0.3113	0.3061
6205302080	0.3113	0.3061
6206100040	0.1245	0.1224
6206303010	0.9961	0.9795
6206303020	0.9961	0.9795
6206303030	0.9961	0.9795
6206303040	0.9961	0.9795
6206303050	0.9961	0.9795
6206303060	0.9961	0.9795
6206403010	0.3113	0.3061
6206403030	0.3113	0.3061
6206900040	0.249	0.2448
6207110000	1.0852	1.0671
6207199010	0.3617	0.3557
6207210010	1.1085	1.09
6207210030	1.1085	1.09
6207220000	0.3695	0.3633
6207911000	1.1455	1.1264
6207913010	1.1455	1.1264
6207913020	1.1455	1.1264
6208210010	1.0583	1.0406
6208210020	1.0583	1.0406

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6208220000	0.1245	0.1224
6208911010	1.1455	1.1264
6208911020	1.1455	1.1264
6208913010	1.1455	1.1264
6209201000	1.1577	1.1384
6209203000	0.9749	0.9586
6209205030	0.9749	0.9586
6209205035	0.9749	0.9586
6209205040	1.2186	1.1982
6209205045	0.9749	0.9586
6209205050	0.9749	0.9586
6209303020	0.2463	0.2422
6209303040	0.2463	0.2422
6210109010	0.2291	0.2253
6210403000	0.0391	0.038
6210405020	0.4556	0.448
6211111010	0.1273	0.1252
6211111020	0.1273	0.1252
6211118010	1.1455	1.1264
6211118020	1.1455	1.1264
6211320007	0.8461	0.832
6211320010	1.0413	1.0239
6211320015	1.0413	1.0239
6211320030	0.9763	0.96
6211320060	0.9763	0.96
6211320070	0.9763	0.96
6211330010	0.3254	0.032
6211330030	0.3905	0.384
6211330035	0.3905	0.384
6211330040	0.3905	0.384
6211420010	1.0413	1.0239
6211420020	1.0413	1.0239
6211420025	1.1715	1.1519
6211420060	1.0413	1.0239
6211420070	1.1715	1.1519
6211430010	0.2603	0.256
6211430030	0.2603	0.256
6211430040	0.2603	0.256
6211430050	0.2603	0.256
6211430060	0.2603	0.256
6211430066	0.2603	0.256
6212105020	0.2412	0.2372
6212109010	0.9646	0.9485
6212109020	0.2412	0.2372
6212200020	0.3014	0.2964
6212900030	0.1929	0.1897
6213201000	1.1809	1.1612
6213202000	1.0628	1.0451
6213901000	0.4724	0.4645
6214900010	0.9043	0.8892
6216000800	0.2351	0.2312
6216001720	0.6752	0.6639
6216003800	1.2058	1.1857
6216004100	1.2058	1.1857
6217109510	1.0182	1.0012
6217109530	0.2546	0.2503
6301300010	0.8766	0.862
6301300020	0.8766	0.862
6302100005	1.1689	1.1494
6302100008	1.1689	1.1494
6302100015	1.1689	1.1494
6302215010	0.8182	0.8045
6302215020	0.8182	0.8045
6302217010	1.1689	1.1494
6302217020	1.1689	1.1494
6302217050	1.1689	1.1494
6302219010	0.8182	0.8045
6302219020	0.8182	0.8045
6302219050	0.8182	0.8045

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6302222010	0.4091	0.4023
6302222020	0.4091	0.4023
6302313010	0.8182	0.8045
6302313050	1.1689	1.1494
6302315050	0.8182	0.8045
6302317010	1.1689	1.1494
6302317020	1.1689	1.1494
6302317040	1.1689	1.1494
6302317050	1.1689	1.1494
6302319010	0.8182	0.8045
6302319040	0.8182	0.8045
6302319050	0.8182	0.8045
6302322020	0.4091	0.4023
6302322040	0.4091	0.4023
6302402010	0.9935	0.9769
6302511000	0.5844	0.5746
6302512000	0.8766	0.862
6302513000	0.5844	0.5746
6302514000	0.8182	0.8045
6302600010	1.1689	1.1494
6302600020	1.052	1.0344
6302600030	1.052	1.0344
6302910005	1.052	1.0344
6302910015	1.1689	1.1494
6302910025	1.052	1.0344
6302910035	1.052	1.0344
6302910045	1.052	1.0344
6302910050	1.052	1.0344
6302910060	1.052	1.0344
6303110000	0.9448	0.929
6303910000	0.6429	0.6322
6304111000	1.0629	1.0451
6304190500	1.052	1.0344
6304191000	1.1689	1.1494
6304191500	0.4091	0.4023
6304192000	0.4091	0.4023
6304910020	0.9351	0.9195
6304920000	0.9351	0.9195
6505901540	0.181	0.178
6505902060	0.9935	0.9769
6505902545	0.5844	0.5746

* * * * *

Dated: March 3, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–5611 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–02–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1306, 1307 and 1309

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Proposed rule; notice of hearing.

SUMMARY: The Northeast Dairy Compact Commission proposes to amend the over-order price regulation to establish a supply management program. The proposed program is an assessment/refund plan under which the Commission would withhold $.05 cents from the producer price from each Compact monthly pool. At the end of the Commission's fiscal (calendar) year, the Commission would refund the withheld funds to compact eligible producers who had increased production at a rate of one percent or less, as compared to the prior calendar year's production. One-half of the assessed funds would be distributed to all eligible producers at a flat rate refund amount and one-half would be distributed based on the total volume of milk produced for the year, up to a maximum per hundredweight refund of $12,000.

DATES: A public hearing will be held on April 5, 2000 to commence at 1:00 p.m. Sworn and notarized written testimony, comments and exhibits may be submitted until 5:00 p.m. on April 19, 2000.

ADDRESSES: The public hearing will be held at the Wayfarer Inn, 121 S. River Road, U.S. Route 3, Bedford, New Hampshire. Mail, or deliver, sworn and notarized testimony, comments and exhibits to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission (''Commission'') was established under authority of the Northeast Interstate Dairy Compact (''Compact''). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact. Congressional consent to the Compact was extended in Pub. L. 106–113, 115 Stat. 1501, November 29, 1999.

Pursuant to its rulemaking authority under Article V, Section 11 of the

Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

On November 27, 1998, the Commission issued a notice of proposed rulemaking proceedings on several subjects and issues, including whether additional supply management policies and provisions should be incorporated into the over-order price regulation.[4] The Commission held a public hearing to receive testimony on December 11, 1998 in Boxborough, Massachusetts and comments were received until 5:00 p.m. on December 31, 1998. The Commission issued a notice of proposed rulemaking on April 19, 1999 [5], in which a specific assessment and refund program was proposed. The Commission held a public hearing on May 5, 1999 in Concord, New Hampshire and received comments until May 19, 1999. The Commission subsequently reopened the rulemaking and proposed a base/excess plan, in addition to an assessment/refund plan. Notice of the supplemental proposed rulemaking proceedings was issued on June 21, 1999.[6] The Commission held public hearings on July 7, 1999 in West Springfield, Massachusetts and August 4, 1999 in White River Junction, Vermont. The Commission received written comments through August 18, 1999.

At its deliberative meeting on February 2, 2000, the Commission decided to conclude those proceedings. At that meeting, the Commission referred the supply management issue to its Committee on Regulations and Rulemaking for further study. The Committee was asked to report back to the full Commission no later than the March 1, 2000 meeting with recommendations for addressing supply management and the requirement in Article IV, Section 9(f) of the Compact. That provision requires the Commission, when establishing a compact over-order price, to ''take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk.''

Since promulgation of the Compact Over-order Price Regulation in 1997, the Commission has closely monitored milk production levels in New England. One of the main goals in initially promulgating the Over-order Price Regulation was to at least stabilize the dairy industry supplying the New England consumer milk markets and to increase the local supply of milk.[7]

Based on the oral testimony and written comments and exhibits received in the December 1998 subjects and issues rulemaking proceeding, and the May, July and August 1999 public hearings and proposed rulemaking proceedings, the Commission proposes to implement a supply management program through an assessment and refund payment to producers who maintain their milk production within one percent of the prior year's production level. The proposed program is described in detail below.

II. Proposed Supply Management Program

The proposed supply management program is designed to meet the Commission's responsibilities under Article IV, Section 9(f) of the Compact. That provision provides that ''[w]hen establishing a compact over-order price, the commission shall take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk.'' The proposed supply management program is relatively straightforward to administer and implement and therefore would be a feasible method of addressing supply management. The proposed supply management program is necessary to ensure that the compact over-order price does not create an incentive for producers to increase milk production, as required by section 9(f) of the Compact.

Table 1 shows the total volume of milk in the Compact pool between July 1997 and December 1999. The volume of milk includes milk produced outside of New England, and distributed within New England, and does not include milk excluded pursuant to the Compact limitations on qualification of diverted and transferred milk.

TABLE 1.—VOLUME OF MILK IN THE COMPACT POOL JULY 1997 THROUGH DECEMBER 1999

[In millions of pounds]

Month	1997	1998	1999
Jan	.....	544.2	568.3
Feb	.....	508.1	528.3
Mar	.....	561.2	563.0
Apr	.....	541.8	568.5
May	.....	580.8	599.0
June	.....	552.1	569.2
July	531.0	567.9	564.3
Aug	532.2	551.3	559.8
Sept	503.9	529.5	530.4
Oct	517.3	544.3	545.9
Nov	498.0	527.3	525.3
Dec	535.1	566.0	560.7
Average	519.6	547.9	556.9

Table 2 shows the volume of milk that has been depooled, or excluded from qualification for Compact payments, pursuant to the Compact limitations on diverted and transferred milk.[8] The limitations on diverted and transferred milk became effective in January 1999 and applied to the first Compact pool in April 1999. The applicable regulations are codified at 7 CFR 1301.23(d) and 1304.2(c).

TABLE 2.—VOLUME OF DEPOOLED MILK JANUARY 1999 THROUGH DECEMBER 1999

[In millions of pounds]

Month	Depooled milk
Jan.	
Feb.	
Mar.	
Apr	4.3
May	1.2
June	.9
July	1.5
Aug	4.8
Sept	4.7
Oct	2.0
Nov	2.2
Dec	1.4
Total	23.0

[1] 62 FR 29626 (May 30, 1997).

[2] 62 FR 62810 (Nov. 25, 1997).

[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).

[4] 63 FR 65563 (Nov. 27, 1998).

[5] 64 FR 19084 (Apr. 19, 1999).

[6] 64 FR 33027 (June 21, 1999).

[7] 62 FR 23039–40 (April 28, 1997); 62 FR 29635 (May 30, 1997); 62 FR 62814 (Nov. 25, 1997).

[8] 63 FR 65517 (Nov. 27, 1998).

Table 3 shows the total volume of milk qualified for Compact payments, after exclusions pursuant to the diverted and transferred milk limitations, by quarter. Table 3 also shows the percent increase in milk volume over the same quarter in the prior year.

TABLE 3.—COMPACT PRODUCER MILK BY QUARTER, JULY 1997 THROUGH DECEMBER 1999

Quarter	1997 (million pounds)	1998 (million pounds)	1999 (million pounds)	1997/1998 (percent)	1998/1999 (percent)
Jan-Mar	.....	1,613.5	1,659.6	.....	2.9
Apr-June	.....	1,674.7	1,736.7	.....	3.7
Jul-Sep	1,567.1	1,648.7	1,654.5	5.2	0.4
Oct-Dec	1,550.4	1,637.6	1,631.9	5.6	−0.4
Average	1,558.75	1,643.6	1,670.7	5.4	1.6

Table 4 shows the federal blend price, the Compact producer price and the percent of total producer price attributed to Compact payments.

TABLE 4.—TOTAL PRODUCER PRICE AND PERCENT ATTRIBUTED TO COMPACT PAYMENTS

Month	Federal blend price (zone 21)	Compact producer price	Total producer price	Percent of total due to compact
July 1997	$11.97	$1.28	$13.25	9.66
August	12.26	1.31	13.57	9.65
September	12.54	1.36	13.90	9.78
October	13.60	0.81	14.41	5.62
November	14.10	0.44	14.54	3.03
December	14.06	0.40	14.46	2.77
January 1998	14.02	0.34	14.36	2.37
February	14.30	0.04	14.34	0.28
March	14.10	0.16	14.26	1.12
April	13.96	0.14	14.10	1.00
May	13.38	0.33	13.71	2.41
June	13.68	0.71	14.39	2.41
July	13.14	1.02	14.16	7.20
August	15.00	0.24	15.24	1.57
September	16.47	0.00	16.47	0
October	16.76	0.00	16.76	0
November	16.67	0.00	16.67	0
December	17.18	0.00	17.18	0
January 1999	17.29	0.00	17.29	0
February	15.82	0.00	15.82	0
March	15.69	0.00	15.69	0
April	11.76	1.43	13.19	10.8
May	12.42	0.82	13.24	6.2
June	12.79	0.73	13.52	5.4
July	12.97	1.01	13.98	7.22
August	13.64	0.70	14.34	4.88
September	15.34	0.21	15.55	1.35
October	15.47	0.00	15.47	0
November	15.41	0.00	15.41	0
December	12.15	1.00	13.15	7.60
Average	14.26	0.49	14.75	3.32

The Commission has considered the data shown in Tables 1 through 4 above to design a feasible supply management program that ensures that the over-order price does not create an incentive for producers to generate additional supplies of milk, and that is also consistent with its primary responsibility of assuring the viability of dairy farming in the northeast, and to assure consumers of an adequate, local supply of pure and wholesome milk. Compact Sections 1 and 9(f)

The proposed program would assess $0.5 per hundredweight from the producer price in each monthly Compact pool. By taking an equal rate from each producer pool, the impact on the monthly producer pay price would be minimized, and predictable, thereby continuing to ensure a sufficient and stable pay price to producers to cover their costs of production. These funds would be accumulated in a separate account throughout the calendar year in a supply management-settlement fund.

At the conclusion of the calendar year, producers would have 45 days to submit an application to the Commission for a refund from the supply management-settlement fund. Producers would be eligible for the refund if they maintained their milk production volume at a rate of increase of 1%, or less, compared to the prior year's production. All eligible producers would receive a refund based on a flat rate per producer. One-half of the supply management-settlement fund would be distributed to eligible producers on a per producer basis. The amount of the flat rate refund would be determined by dividing the total number of eligible producers into one-half the value of the supply management-settlement fund.

In addition, eligible producers would receive a refund amount based on a price per hundredweight of their total volume of milk produced in the calendar year, up to a maximum of $12,000. The other half of the supply management-settlement fund would be distributed on the per hundredweight

basis. The amount of this half of the refund would be determined by dividing the total volume of milk produced by eligible producers into one-half the value of the supply management-settlement fund to determine the rate per hundredweight each eligible producer would receive.

The assessment/refund program would provide a reward to those producers who stabilize their milk production and would create an incentive for all producers to maintain a stable, local supply of milk for the New England milk market.

All producers would share equally in the burden of funding this program through a reduction in the producer pay price. Only those producers who reduce or maintain their production level at 1% or less would be eligible for a refund. However, the program would not otherwise restrict the milk production of those producers who, for business reasons unrelated to the compact payments, choose to increase their milk production at a rate greater than 1% per year.

It is the intention and judgment of the Commission that the combination of the proposed supply management assessment/refund program and the rules limiting compact payments on diverted and transferred milk will operate in coordination to regulate the supply of milk in New England relative to the consumer demand and to ensure that the compact payments do not create an incentive to generate supplies of milk in excess of the tolerance levels prescribed for diverted and transferred milk.

The Commission offers the following examples to assist interested persons in evaluating the proposed supply management program. Tables 5 and 6 show the estimated impact of the assessment/refund program on different size farms. The tables are based on the following assumptions. The monthly average production in the Compact pool in 1999 was approximately 556,900,000 pounds, with a yearly production of 6,682,800,000. Using an assessment figure of $.05 per hundredweight, the total assessment/refund pool would be $3,341,400 annually. Assuming there are 4,000 Compact eligible producers, the average cost of the assessment per producer would be $835. The per hundredweight refund amount would be paid on the producers total annual production. The Commission estimates that 60–70% of producers could be eligible for the refund under the proposed program. Table 5 assumes that 60% (2,400) producers would be eligible for a refund and the per producer payment would be $696 for all eligible producers and the per hundredweight refund rate would be $.041. Table 6 assumes that 70% (2,800) of producers would be eligible for the refund and the per producer payment would be $595 and the per hundredweight refund rate would be $.035. Refund payments on a per hundredweight basis would not exceed $12,000.

TABLE 5.—60% ELIGIBLE PRODUCERS

No. of cows	Pounds	Cost	$/farm	$/cwt	$ Total	Net refund
40	700,000	$350	$696	$287	$983	$633
57	1,000,000	500	696	410	1,106	606
86	1,500,000	750	696	615	1,311	561
286	5,000,000	2,500	696	2,050	2,746	246
1,144	20,000,000	10,000	696	8,200	8,896	−1,104

TABLE 6.—70% ELIGIBLE PRODUCERS

No. of cows	Pounds	Cost	$/farm	$/cwt	$ Total	Net refund
40	700,000	$350	$596	$245	$841	$491
57	1,000,000	500	596	350	946	446
86	1,500,000	750	596	525	1,121	371
286	5,000,000	2,500	596	1,750	2,346	−154
1,144	20,000,000	10,000	596	7,000	7,596	−2,404

III. Proposed Technical Amendments to the Over-Order Price Regulation

The Commission proposes to amend section 1306.3 and to add a new Part 1309 to provide the necessary regulations to implement the proposed supply management assessment/refund program. The Commission also proposes to make corresponding technical changes required by the specific amendments and additions to the current regulations.

The Commission proposes to amend section 1306.3, by first redesignating existing paragraphs (e) through (g) as paragraphs (f) through (h) and adding a new paragraph (e). The new paragraph will allow the Commission to withhold $.05 from each monthly producer pool to fund the supply management-settlement fund.

A new Part 1309 is proposed to provide the regulations to implement the supply management program. Section 1309.1 defines producer qualifications for the refund program. Section 1309.2 defines the procedure for computing the refund prices to be paid to qualified producers. Section 1309.3 would provide the authority for the establishment of a supply management-settlement fund. Finally, section 1309.4 would describe the procedure for issuing payments to producers eligible for a refund under the supply management program.

Official Notice of Technical, Scientific or Other Matters

Pursuant to the Commission regulations, 7 CFR 1361.5(g)(5), the Commission hereby gives public notice that it may take official notice, at the public hearing April 5, or afterward, of relevant facts, statistics, data, conclusions, and other information provided by or through the United States Department of Agriculture, including, but not limited to, matters reported by the National Agricultural Statistics Service, the Market Administrators, the Economic Research Service, the Agricultural Marketing Service and information, data and statistics developed and maintained by the Departments of Agriculture of the States or Commonwealth within the Compact regulated area and the November 1999 study conducted by the University of Vermont entitled ''Impacts of the Northeast Interstate Dairy Compact on the New England Milk Supply.''

The Commission will also receive into the record of this rulemaking proceeding the entire record, including the public hearing transcript and written comments and submissions, of the December 1998 subjects and issues rulemaking proceeding regarding whether additional supply management policies and provisions should be incorporated into the Over-order Price Regulation and the proposed rulemaking noticed on April 19, 1999 at 64 FR 19084 and the supplemental proposed rulemaking proceeding noticed on June 21, 1999 at 64 FR 33027.

Public Participation in Rulemaking Proceedings

The Commission seeks and encourages oral and written testimony and comments from all interested persons regarding these proposed rules. The Commission continues to benefit from the valuable insights and active participation of all segments of the affected community including consumers, processors and producers in the development and administration of the Over-order Price Regulation.

Date, Time and Location of the Public Hearing

The Northeast Dairy Compact Commission will hold a public hearing to commence at 1:00 p.m. on April 5, 2000 at the Wayfarer Inn, 121 S. River Road, U.S. Route 3, Bedford, New Hampshire.

Written Comments and Exhibits

Pursuant to the Commission rules, 7 CFR 1361.4, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments or exhibits to the Commission. Comments and exhibits may be submitted at any time before 5:00 p.m. on April 19, 2000.

Please note: Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn and notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 p.m. deadline, but the original must then be sent by ordinary mail.

List of Subjects in 7 CFR Parts 1306, 1307 and 1309

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission proposes to amend 7 CFR parts 1306 and 1307 and to add a new part 1309 as follows:

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

1. The authority citation for part 1306 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. In § 1306.3 redesignate paragraphs (e) through (g) as paragraphs (f) through (h) and add a new paragraph (e) to read as follows:

§ 1306.3 Computation of basic over-order producer price.

* * * * *

(e) Subtract 5 cents per hundredweight from the basic over-order producer price computed pursuant to this section and deposit that amount in the supply management-settlement fund.

* * * * *

PART 1307—PAYMENTS FOR MILK

3. The authority citation for part 1307 continues to read as follows:

Authority: 7 U.S.C. 7256.

4. Section 1307.1 is amended in paragraphs (a), (b) and (c) by removing ''1306.3(f)'' and adding ''1306.3(g)'' in its place.

5. A new part 1309 is added to read as follows:

PART 1309—SUPPLY MANAGEMENT REFUND PROGRAM

Sec.

1309.1 Producer qualification for supply management refund program.
1309.2 Computation of supply management refund prices.
1309.3 Supply management-settlement fund.
1309.4 Payment to producers of supply management refund.

Authority: 7 U.S.C. 7256.

§ 1309.1 Producer qualification for supply management refund program.

A dairy farmer who is a qualified producer pursuant to § 1301.11 of this chapter for the entire refund year and the dairy farmer's milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year.

§ 1309.2 Computation of supply management refund prices.

The compact commission shall compute the supply management refund prices applicable to all qualified milk as follows:

(a) Combine into one total the values, including all interest earned, deducted pursuant to § 1306.3(e) of this chapter for the refund year;

(b) Subtract 50% from the total value computed pursuant to paragraph (a) of this section to be used for the per farm payments to producers who submitted documentation pursuant to § 1309.4(a);

(c) Divide the resulting amount by the sum of all milk production reported by producers qualified pursuant to § 1309.1 and who submitted documentation pursuant to § 1309.4(a).

§ 1309.3 Supply management-settlement fund.

(a) The compact commission shall establish and maintain a separate fund known as the supply management-settlement fund. It shall deposit into the fund all amounts deducted pursuant to § 1306.3(e) of this chapter. It shall pay from the fund all amounts due producers pursuant to § 1309.4;

(b) All amounts subtracted under § 1309.2(c), including interest earned thereon, shall remain in the supply management-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1309.4;

(c) The compact commission shall place all monies subtracted under § 1306.3(e) of this chapter in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities;

(d) If, after payments to producers of supply management refund pursuant to § 1309.4 there is a surplus in the fund, it is to be returned to the producer-settlement fund.

§ 1309.4 Payment to producers of supply management refund.

(a) All producers who are qualified pursuant to § 1309.1 shall become eligible to receive payment of the supply management refund computed pursuant to § 1309.2 by submitting to the compact commission documentation that the producer milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year. Such documentation shall be filed with the commission not later than 45 days after the end of the calendar year.

(b) The commission will make payment to all producers qualified pursuant to § 1309.1 and eligible pursuant to paragraph (a) of this section in the following manner:

(1) A per farm payment computed by dividing the amount subtracted pursuant to § 1309.2(b) by the total eligible producers; and

(2) The value determined by multiplying the supply management

refund price computed pursuant to § 1309.2(e) by the producer's milk pounds, not to exceed $12,000.

Dated: March 2, 2000.

Kenneth M. Becker,

Executive Director.

[FR Doc. 00–5585 Filed 3–7–00; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 95–066–1]

Viruses, Serums, Toxins, and Analogous Products; Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations for autogenous biologics. The number of test summaries that autogenous biologics manufacturers must submit to the Animal and Plant Health Inspection Service would be reduced. In addition, we are proposing to amend the requirement concerning the submission to the Animal and Plant Health Inspection Service of containers selected from each serial of autogenous biologic that exceeds 50 containers. Manufacturers would be required to hold these containers and submission would not be required unless requested by the Animal and Plant Health Inspection Service. These actions would result in savings in time and resources for autogenous biologics manufacturers and the Animal and Plant Health Inspection Service without a significant reduction in regulatory oversight.

DATES: We will consider all comments that we receive by May 8, 2000.

ADDRESSES: Please send your comment and three copies to:

Docket No. 95–066–1, Regulatory Analysis and Development, PPD, APHIS Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 95–066–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in title 9, Code of Federal Regulations (9 CFR), part 113 contain standard requirements for the preparation of veterinary biological products. Section 113.113 of the regulations sets forth the requirements for autogenous biologics. Autogenous biologics are prepared from cultures of microorganisms that are isolated from sick or dead animals of a particular flock or herd. The cultures are used to produce an autogenous veterinary biological product that is administered to other animals of the originating flock or herd to prevent them from being affected by the same disease. Autogenous biologics may also be used in adjacent and nonadjacent herds under certain conditions, if approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Autogenous biologics are intended for use in isolated cases of diseases of animals when licensed products are not available or such products are unable to protect the vaccinated animals (*e.g.,* the strain of microorganism in the licensed product differs from the strain associated with the disease outbreak). Autogenous biologics can also be used to respond to emergency outbreaks of diseases of animals when the immediate need for the product is such that it precludes the usual route of vaccine development.

Given the special circumstances pertaining to the preparation and use of autogenous biologics, including the need for a rapid response to emergencies, special testing and serial release reporting requirements have been applied. In § 113.113, paragraph (c)(1)(ii) allows first serials or subserials of an autogenous biologic that are satisfactory after the third day of observation of purity test cultures and safety test animals to be released for shipment to the customer while the purity and safety tests are continued through the required period. Paragraph(c)(1)(iii) of § 113.113 provides that such serials must be immediately recalled if evidence of contamination occurs in the purity test cultures or if any of the test animals used to demonstrate product safety get sick or die during the observation period. However, because autogenous biologic products can be shipped prior to completion of testing, the products, in most cases, have been used in animals prior to the completion of testing. In addition, § 113.113(c)(1)(iv) requires autogenous biologics manufacturers to submit to APHIS the test summaries of the first serial or subserial within 4 days of the completion of the purity and safety tests. The test summaries must be submitted to APHIS in accordance with § 116.7 of 9 CFR part 116, ''Records and Reports.'' (Section 116.7, in short, provides the requirements for maintenance of detailed records of all tests conducted on each serial and subserial and the preparation and submission of summaries of such tests using APHIS Form 2008 or an equivalent prior to release of the serial or subserial.)

In 1993, the last year for which full data are available, veterinary biologics manufacturers submitted approximately 11,400 autogenous biologics first serial test summaries to APHIS for processing, and the number of reports has increased in succeeding years. However, we believe that the requirement to submit test summaries from the first serial or subserial of an autogenous biologic within 4 days of completion of purity and safety tests for serials that may have already been used in animals is unnecessary. We believe that these reports can be submitted on a quarterly basis without reducing our regulatory oversight. Therefore, we are proposing to revise § 113.113(c)(iv) to provide that test summaries must be submitted on a quarterly basis as summary reports by the 21st day of January, April, July, and October, or more often as required by the Administrator.

Because we would allow the submission of test summaries on a quarterly basis, we would no longer refer to § 116.7.

Reserve Samples

Manufacturers of autogenous biologics are required by § 113.3 to submit to APHIS samples from each serial or subserial of an autogenous biologic for confirmatory purity and safety testing. In § 113.3, paragraph (b)(8) states that, in the case of

autogenous biologics, 10 samples for submission to APHIS must be selected from each serial that exceeds 50 containers. Samples from serials containing 50 or fewer containers are required to be held and need not be submitted unless requested. Because purity testing can be conducted on any serial of comparable product, we do not believe that 10 samples from serials of autogenous biologics that exceed 50 containers need to be submitted to APHIS to maintain our current regulatory oversight. We believe that autogenous biologics manufacturers should maintain samples of the first serial or subserial in reserve and, if requested, submit them to APHIS when testing is necessary. However, samples of second serials and subsequent serials that exceed 50 containers will still be required to be submitted.

Therefore, we are proposing to revise § 113.3(b)(8) to provide that, with the exception of the first serial or subserial, 10 samples must be selected for submission to APHIS from each serial or subserial of autogenous biologic that exceeds 50 containers. For first serials or subserials with more than 50 containers, 10 samples would need to be selected and held in reserve for submission to APHIS upon request. For all serials or subserials with 50 or fewer containers, reserve samples would be handled as prescribed in § 113.3(e) of the regulations.

Miscellaneous

We are also proposing minor nonsubstantive and editorial changes to the regulations, as set out in the rule portion of this document. The main change would be in the APHIS address appearing in § 113.113(a)(2).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The 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.

We are proposing to amend the Virus-Serum-Toxin Act regulations for autogenous biologics. We are proposing to reduce the number of test summaries that autogenous biologics manufacturers must submit to APHIS. In addition, we are proposing to amend the requirement for the submission of samples of any autogenous biologic that exceeds 50 containers by requiring autogenous biologics manufacturers to hold samples of the first serial or subserial of the autogenous biologic in reserve. These actions would result in savings in time and resources for autogenous biologics manufacturers and APHIS without a significant reduction in regulatory oversight.

This proposed rule would affect all licensed veterinary biologics establishments that produce autogenous biologics. Currently, there are approximately 150 veterinary biologics establishments, and approximately 35 of these establishments produce autogenous biologics. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

By creating a system that allows the quarterly reporting of test results for first serials and subserials of autogenous biologics, APHIS would reduce paperwork submissions from autogenous biologics manufacturers by approximately 25 percent or more. This would reduce the industry's annual reporting burden by approximately 6,018 hours.

In addition, this proposed rule would allow autogenous biologics manufacturers to hold in reserve 10 samples from the first serial or subserial of any serial or subserial of an autogenous biologic with more than 50 containers. These manufacturers would no longer need to submit samples of the first serial or subserial to APHIS unless requested to do so. Allowing autogenous biologics manufacturers to hold these samples in reserve would save them the time and resources previously invested in shipping samples to APHIS.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This action would, in fact, reduce paperwork submissions from autogenous biologics manufacturers by approximately 25 percent or more. This would reduce the industry's annual reporting burden by approximately 6,018 hours.

List of Subjects 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 113 as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 113.3, paragraph (b)(8) would be revised to read as follows:

§ 113.3 Sampling of biological products.

* * * * *

(b) * * *

(8) *Autogenous biologics.* With the exception of the first serial or subserial, 10 samples must be selected from each serial or subserial of an autogenous biologic that consists of more than 50 containers. For first serials or subserials with more than 50 containers, 10 samples from each serial or subserial must be selected and held in reserve for submission to the Animal and Plant Health Inspection Service upon request in accordance with paragraph (e)(4) of this section. For all serials or subserials with 50 or fewer containers, reserve samples must be selected and held as prescribed in paragraph (e) of this section.

* * * * *

3. In § 113.113, paragraphs (a)(2) introductory text and (c)(1)(iv) would be revised to read as follows:

§ 113.113 Autogenous biologics.

(a) * * *

(2) Under normal circumstances, microorganisms from one herd must not be used to prepare an autogenous biologic for another herd. The Administrator, however, may authorize preparation of an autogenous biologic for use in herds adjacent to the herd of origin, when adjacent herds are considered to be at risk. To request authorization to prepare a product for use in herds adjacent to the herd of origin, the establishment seeking

authorization must submit to the Administrator (in c/o the Director, Center for Veterinary Biologics, Inspection and Compliance, 510 South 17th Street, Suite 104, Ames, IA 50010–8197) the following information. (If any of the data are unavailable, the applicant for authorization should indicate that such data are unavailable and why.)

* * * * *

(c) * * *

(1) * * *

(iv) Test summaries must be submitted to the Administrator (in c/o the Director, Center for Veterinary Biologics, Inspection and Compliance, 510 South 17th Street, Suite 104, Ames, IA 50010–8197) on a quarterly basis by the 21st day of January, April, July, and October, or more often as required by the Administrator.

* * * * *

Done in Washington, DC, this 1st day of March, 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5596 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–33]

Proposed Realignment of Jet Route; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to realign Jet Route 25 (J–25) in the vicinity of San Antonio, TX. This proposal would realign the affected jet route between the Corpus Christi Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the San Antonio VORTAC. The FAA is proposing this action to enhance the management of air traffic operations and allow for better utilization of navigable airspace in the San Antonio, TX, area.

DATES: Comments must be received on or before April 25, 2000.

ADDRESSES: Send comments on this proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 99–ASW–33, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ASW–33.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Superintendent of Documents's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

As a result of a recent airspace review, the FAA has determined that a segment of J–25, between the Corpus Christi VORTAC and the San Antonio VORTAC, requires realignment to allow for better utilization of the navigable airspace in the San Antonio, TX, area.

The Proposal

The FAA is proposing an amendment to part 71 of Title 14 Code of Federal Regulations to realign J–25 in the vicinity of San Antonio, TX. This proposal would realign the affected jet route between the Corpus Christi VORTAC and the San Antonio VORTAC. The FAA is proposing this action to enhance the management of air traffic operations and allow for better utilization of navigable airspace in the San Antonio, TX, area.

Jet routes are published in paragraph 2004 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory

Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–25 [Revised]

From Matamoras, Mexico, via Brownsville, TX; INT of the Brownsville 358° and the Corpus Christi, TX, 178° radials; Corpus Christi; INT of the Corpus Christi 311° (302°M) and the San Antonio, TX, 174°(266°M) radials; San Antonio; Centex, TX; Waco, TX; Ranger, TX; Tulsa, OK; Kansas City, MO; Des Moines, IA; Mason City, IA; Gopher, MN; Brainerd, MN; to Winnipeg, MB, Canada. The airspace within Canada is excluded. The airspace within Mexico is excluded.

* * * * *

Issued in Washington, DC, on March 2, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–5598 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 97P–0044]

New Drugs for Human Use; Clarification of Requirements for Patent Holder Notification; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of its proposed rule published in the **Federal Register** on March 6, 1998 (63 FR 11174). The document proposed to amend FDA's regulations on notice of certification of invalidity or noninfringement of a patent to provide additional methods for new drug and abbreviated new drug applicants to provide notice to patent owners and new drug application (NDA) holders, without removing the existing means. FDA is withdrawing this proposal based on comments regarding the inability of large corporations to track receipt of deliveries by means other than certified mail, return receipt requested.

DATES: The proposed rule is withdrawn March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 6, 1998 (63 FR 11174), FDA proposed to permit new drug and abbreviated new drug applicants to provide notice of certification of invalidity or noninfringement of a patent to patent owners and NDA holders by overnight delivery service, facsimile, and electronic mail, in addition to U.S. Postal Service (USPS) registered or certified mail, return receipt requested, or another method approved in advance by the agency. Sections 314.52(c) and 314.95(c) (21 CFR 314.52(c) and 314.95(c)) set forth the content requirements of the notice of certification. Under §§ 314.52(e) and 314.95(e), applicants must amend their applications to document receipt of the notice of certification by each person provided the notice. Applicants must include a copy of the return receipt or other similar evidence of the date the notification was received. FDA accepts as adequate documentation of the date of receipt a return receipt or a letter acknowledging receipt by the person provided the notice. Under §§ 314.52(e) and 314.95(e), applicants may rely on another form of documentation only if FDA has agreed to such documentation in advance. FDA reminds those providing notice of certification to application holders that if an application holder does not reside or maintain a place of business within the United States, notice must be sent to the application holder's U.S. attorney, agent, or other authorized official (§§ 314.52(a)(2) and 314.95(a)(2)). FDA also notes that the term ''registered or certified mail'' as used in §§ 314.52(a) and 314.95(a) means USPS registered or certified mail, and not equivalent delivery via foreign mail. Since the actual form of international registered or certified mail and receipt may vary from country to country, use of international mail could put a substantial burden on innovator companies to be alert to multiple forms of notice. Therefore, applicants must use USPS mail. Delivery by USPS mail should not be burdensome since applicants are required to have a U.S. agent.

II. Comments on the Proposed Rule

FDA received three comments on the proposed rule. The comments were from two large pharmaceutical companies and from the Pharmaceutical Research and Manufacturers Association. All of the comments stated that electronic methods of delivery, including facsimile and electronic mail, are too unreliable at this stage to be used to deliver notification.

One of the comments supported use of overnight and messenger delivery services. One comment stated that overnight delivery service would be acceptable only if the person receiving the notice signed a form verifying receipt of the notice. The other comment stated that overnight delivery services are not acceptable because deliveries are made in bulk, accompanied by a manifest that does not guarantee that each item listed is in fact in the bulk package and that individual items are not signed for.

All of the comments stated that the present system is workable.

III. Withdrawal of the Proposed Rule

After careful consideration of these comments, FDA has concluded that the current system, which requires only that an applicant send notice by USPS registered or certified mail, return receipt requested, is not overly

burdensome. This requirement is intended to provide maximum assurance that the notice will be received by the patent holder and the NDA holder, and that such receipt will be documented adequately. In addition, FDA has concluded that adding new methods of notification presents complications in ensuring that notification is received by sponsors. Accordingly, FDA is withdrawing its proposed rule to permit new drug and abbreviated new drug applicants to provide notice of certification of invalidity or noninfringement of a patent to patent owners and NDA holders by overnight delivery service, facsimile, and electronic mail, in addition to USPS registered or certified mail, return receipt requested, or another method approved in advance by the agency.

Dated: February 29, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5527 Filed 3–7–00; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–168; MM Docket No. 00–15, RM–9804; MM Docket No. 00–16, RM–9805]

Radio Broadcasting Services; Susquehanna, PA; and Burke, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes two new allotments at Susquehanna, Pennsylvania, and Burke, South Dakota. The Commission requests comments on a petition filed by Tammy M. Celenza proposing the allotment of Channel 227A at Susquehanna, Pennsylvania, as the community's second local FM transmission service. Channel 227A can be allotted to Susquehanna in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.3 kilometers (3.9 miles) east to avoid short-spacings to the licensed sites of Station WBZD–FM, Channel 227B1, Muncy, Pennsylvania, and Station WKXZ(FM), Channel 230B, Norwich, New York. The coordinates for Channel 227A at Susquehanna are 41–55–44 North Latitude and 75–31–50 West Longitude. Since Susquehanna is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been requested.

DATES: Comments must be filed on or before March 20, 2000, and reply comments on or before April 4, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Michael Celenza, Celenza Communications, 41 Kathleen Crescent, Coram, New York 11727 (Consultant for Tammy M. Celenza); and Heather Drischel, General Partner, NationWide Radio Stations, 496 Country Road 308, Big Creek, Mississippi 38914 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–15; and MM Docket No. 00–16, adopted January 19, 2000, and released February 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

The Commission also requests comments on a petition filed by NationWide Radio Stations proposing the allotment of Channel 264A at Burke, South Dakota, as the community's first local aural transmission service. Channel 264A can be allotted to Burke in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.5 kilometers (2.2 miles) east to avoid a short-spacing to the vacant allotment site for Channel 264A at Mission, South Dakota. The coordinates for Channel 264A at Burke are 43–11–06 North Latitude and 99–15–02 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5545 Filed 3–7–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF98

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Alameda Whipsnake (Masticophis lateralis euryxanthus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the Alameda whipsnake (*Masticophis lateralis euryxanthus).* A total of approximately 164,663 hectares (406,708 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Contra Costa, Alameda, San Joaquin, and Santa Clara counties, California. If this proposal is made final, section 7 of the Act, which prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency, would apply to the designated critical habitat for the Alameda whipsnake. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation and our approaches for handling habitat conservation plans (HCPs). We may revise this proposal to incorporate or address new information received during the comment period.

DATES: Comments from all interested parties must be received by May 8, 2000. Public hearing requests must be received by April 24, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825; or

2. You may hand-deliver written comments to our Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825; or

3. You may send comments by electronic mail (e-mail) to aws__critical__habitat@fws.gov. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: RIN 1018–AF98'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone 916/414–6600.

FOR FURTHER INFORMATION CONTACT: Jason Davis or Heather Bell, at the above address (telephone 916/414–6600).

SUPPLEMENTARY INFORMATION:

Background

The Alameda whipsnake is a member of the genus *Masticophis*. The Alameda whipsnake is a slender, fast-moving, diurnal snake with a broad head, large eyes, and slender neck. Alameda whipsnakes range from 91 to 122 centimeters (3 to 4 feet) in length. The dorsal surface is sooty black in color with a distinct yellow-orange stripe down each side. The anterior portion of the ventral surface is orange-rufous colored, the midsection is cream colored, and the posterior and tail are pinkish. The adult Alameda whipsnake virtually lacks black spotting on the ventral surface of the head and neck. Juveniles may show very sparse or weak black spots. Another common name for the Alameda whipsnake is the ''Alameda striped racer'' (Riemer 1954, Jennings 1983, Stebbins 1985).

The Alameda whipsnake is one of two subspecies of the California whipsnake (*Masticophis lateralis*). The chaparral whipsnake (*Masticophis lateralis lateralis*) is distributed from northern California, west of the Sierran crest and desert, to central Baja California. The Alameda whipsnake is restricted to a small portion of this range, primarily the inner Coast Range in western and central Contra Costa and Alameda Counties.

The distribution in California, of both subspecies, coincides closely with chaparral (Jennings 1983, Stebbins 1985). Recent telemetry data indicate that, although home ranges of Alameda whipsnakes are centered on shrub communities, whipsnakes frequently venture into adjacent habitats, including grassland, oak savanna, and occasionally oak-bay woodland. Most telemetry locations are within 50 meters (m) (170 feet (ft)) of scrub habitat, but distances of greater than 150 m (500 ft) occur (Swaim 1994). Initial data indicate that adjacent habitats may play a crucial role in certain life history and physiological needs of the Alameda whipsnake, but the full extent has yet to be determined. Telemetry data indicate that whipsnakes remain in grasslands for periods ranging from a few hours to several weeks at a time. Grassland habitats are used by male whipsnakes most extensively during the mating season in spring. Female whipsnakes use grassland areas most extensively after mating, possibly in their search for suitable egg-laying sites (Swaim 1994).

Rock outcrops are an important feature of Alameda whipsnake habitat because they provide retreat opportunities for whipsnakes and promote lizard populations. Lizards, especially the western fence lizard (*Sceloporus occidentalis*), appear to be the most important prey item of whipsnakes (Stebbins 1985; Swaim 1994; Harry Green, Museum of Vertebrate Zoology, U.C. Berkeley, pers. comm. 1998), although other prey items are taken, including skinks, frogs, snakes, and birds (Stebbins 1985, Swaim 1994). Most radio telemetry locations for whipsnakes were within the distribution of major rock outcroppings and talus (Swaim 1994).

Alameda whipsnakes have been found in association with a variety of shrub communities including diablan sage scrub, coyote bush scrub, and chamise chaparral (Swaim 1994), also classified as coastal scrub, mixed chaparral, and chamise-redshank chaparral (Mayer and Laudenslayer 1988). However, the type of vegetation may have less to do with preference by the whipsnake than the extent of the canopy, slope exposure, the availability of retreats such as rock outcrops and rodent burrows, and prey species composition and abundance (Swaim 1994; K. Swaim, Swaim Biological Consulting, pers. comm. 1999). Alameda whipsnakes have been sighted or found dead a significant distance from the nearest shrub community (K. Swaim, pers. comm. 1999). The reasons for such movements are unknown.

Initial studies indicated that Alameda whipsnakes occurred where the canopy was open (less than 75 percent of the total area within the scrub or chaparral community was covered by shrub crown) or partially open (between 75 and 90 percent of the total area was covered with shrub crown), and only seldom did whipsnakes occur in closed canopy (greater than 90 percent of the area was covered by shrub crown). However, trapping efforts may have been biased due to the difficulty of setting traps in dense scrub (Swaim 1994; K. Swaim, pers. comm. 1999).

Core areas (areas of concentrated use) of the Alameda whipsnake most commonly occur on east, south, southeast, and southwest facing slopes (Swaim 1994). However, recent information indicates that whipsnakes do make use of north facing slopes in more open stands of scrub habitat (K. Swaim, pers. comm. 1999).

Adult snakes appear to have a bimodal seasonal activity pattern with peaks during the spring mating season and a smaller peak during late summer and early fall. Although short above-ground movements may occur during the winter, Alameda whipsnakes generally retreat in November into a hibernaculum (shelter used during the snake's dormancy period) and emerge in March. Courtship and mating occur from late-March through mid-June. During this time, males move around throughout their home ranges, while females appear to remain at or near their hibernaculum, where mating occurs. Suspected egg-laying sites for two females were located in grassland with scattered shrub habitat. Male home ranges of 1.9 to 8.7 hectares (ha) (4.7 to 21.5 acres (ac)) (mean of 5.5 ha or 13.6 ac) were recorded, and showed a high degree of spatial overlap. Several individual snakes monitored for nearly an entire activity season appeared to maintain a stable home range. Movements of these individuals were multi-directional, and individual snakes returned to specific areas and retreat sites after long intervals of non-use. Snakes had one or more core areas within their home range, while large areas of the home range received little use (Swaim 1994).

Previous Federal Action

The September 18, 1985, Notice of Review (50 FR 37958) included the Alameda whipsnake as a category 2 candidate species for possible future listing as endangered or threatened. Category 2 candidates were those taxa for which listing as threatened or endangered might be warranted, but for which adequate data on biological

vulnerability and threats were not available to support issuance of listing proposals. The January 6, 1989, Notice of Review (54 FR 554) solicited information on its status as a category 2 candidate species. The Alameda whipsnake was moved to category 1 in the November 21, 1991, Notice of Review (56 FR 58804) on the basis of significant increases in habitat loss and threats occurring throughout its range. Category 1 candidates were defined as taxa for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On February 4, 1994, we published a proposed rule in the **Federal Register** (59 FR 5377) to list the Alameda whipsnake as an endangered species. On December 5, 1997, we published a final rule listing the Alameda whipsnake as threatened (62 FR 64306).

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior (Secretary), for failure to designate critical habitat for seven species: the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helminthoglypta walkeriana*), the Arroyo southwestern toad (*Bufo microscaphus californicus)*, the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (Somateria fischeri), and the Steller's eider (*Polysticta stelleri*) (*Southwest Center for Biological Diversity* v. *U.S. Fish and Wildlife*, CIV 99–1003 MMC).

On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit pursuant to a settlement agreement entered into by the parties. Publication of this proposed rule is consistent with that settlement agreement.

Absent the settlement agreement, the processing of this proposed rule does not conform with our current Listing Priority Guidance for fiscal year 2000 published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. We are processing this proposed rule in compliance with the above-mentioned settlement agreement.

Critical Habitat

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

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude 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 extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide 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 protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. ''Jeopardize the continued existence'' (of a species) is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species.

''Destruction or adverse modification'' (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are nearly identical (50 CFR 402.02). When multiple units of critical habitat are designated, each unit may serve as the basis of a jeopardy analysis if protection of different facets of the species' life cycle or its distribution are essential to the species as a whole for both its survival and recovery.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create or mandate a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultation.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection. Areas that do not currently contain the habitat components necessary for the primary biological needs of a species but are likely to develop them in the future may be essential to the conservation of the species and may be designated as critical habitat.

We did not propose to designate critical habitat for the Alameda whipsnake within the proposed or final listing rulemaking because, at the time of listing, we knew of no Federal lands within the five whipsnake populations. We also believed that the possibility of Federal agency involvement on private and public, non-Federal lands was

remote. Based on information available at the time of listing, we believed that only 20 percent of known whipsnake habitat occurred on private lands, and anticipated that urban development on private lands would occur only along the periphery of whipsnake populations. In addition, we believed that the need for active fire management programs at this urban-wildland interface would preclude those private lands from being considered habitat essential to the conservation of the species. We found that critical habitat designation was not prudent due to lack of any significant benefit beyond that conferred by listing.

Since the Alameda whipsnake was listed, we have found that there are a greater number of Federal actions that could trigger the need for an interagency consultation than was believed at the time the Alameda whipsnake was listed. We are now aware of federally owned lands that occur within the range of the Alameda whipsnake, including several Bureau of Land Management parcels in the Mount Diablo-Black Hills population area. In addition, an Alameda whipsnake was recently captured on land owned by the U.S. Department of Energy at their Site 300 facility, a Federal site previously unknown to be inhabited by Alameda whipsnakes. We are also aware of a number of activities with a Federal nexus on private lands within whipsnake populations, including activities associated with the issuance of Clean Water Act section 404 permits and Federal Emergency Management Agency fire protection projects.

We now believe that private lands play a more important role in whipsnake conservation than was originally believed. An increasing amount of private land has been found to be occupied by the Alameda whipsnake, comprising more than 20 percent of land within the five whipsnake populations. Large amounts of occupied, high-value Alameda whipsnake habitat occur on private lands that are evenly distributed throughout all five whipsnake population areas. We now believe that areas that are essential to the conservation of the species include private lands.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The areas we are proposing to designate as critical habitat provide some or all of those habitat components essential for the primary biological needs of the Alameda whipsnake, also called primary constituent elements.

The primary constituent elements for the Alameda whipsnake are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The primary constituent elements are found, or could develop, in areas that support or have the potential to support scrub communities, including mixed chaparral, chamise-redshank chaparral, coastal scrub, and annual grassland and oak woodlands that lie adjacent to scrub habitats. In addition, the primary constituent elements for the Alameda whipsnake may be found in grasslands and various oak woodlands that are linked to scrub habitats by substantial rock outcrops or riparian corridors. Other habitat features that provide a source of cover for the whipsnake during dispersal or are near scrub habitats and contain habitat features (*e.g.,* rock outcrops) that support adequate prey populations may also contain primary constituent elements for the Alameda whipsnake. Within these communities, Alameda whipsnakes require plant canopy covers that supply a suitable range of temperatures for the species' normal behavioral and physiological requirements (including but not limited to foraging, breeding, and maturation). Openings in the plant canopy or scrub/grassland edge provide sunning and foraging areas. Corridors of plant cover and retreats (including rock outcrops) sufficient to provide for dispersal between areas of habitat, and plant community patches of sufficient size to prevent the deleterious effects of isolation (such as inbreeding or the loss of a subpopulation due to a catastrophic event) are also essential. Within these plant communities, specific habitat features needed by whipsnakes include, but are not limited to, small mammal burrows, rock outcrops, talus, and other forms of cover to provide temperature regulation, shelter from predators, egg laying sites, and winter hibernaculum. Many of these same elements are important in maintaining prey species. Adequate insect populations are necessary to sustain prey populations.

Criteria Used To Identify Critical Habitat

We considered several qualitative criteria in the selection and proposal of specific areas or units for Alameda whipsnake critical habitat. Such criteria focused on designating units (1) throughout the geographic and elevation range of the species; (2) within various occupied plant communities, such as diablan sage scrub, coyote bush scrub, and chamise chaparral; (3) in areas of large, contiguous blocks of occupied habitat; and (4) in areas that link contiguous blocks of occupied habitat (*i.e.,* linkage areas).

Methods

In developing critical habitat for the Alameda whipsnake, we used data on known Alameda whipsnake locations to initially identify important areas. Through the use of 1998 and 1999 1:12,000 aerial photos and 1994 digital orthophotos, we examined the extent of suitable habitat that was in the vicinity of known whipsnake locations. Critical habitat includes both suitable habitat and areas that link suitable habitat, as these links facilitate movement of individuals between habitat areas and are important for dispersal and gene flow (Beier and Noss 1998). We have determined seven separate units of critical habitat, five of which represent primary breeding, feeding, and sheltering areas, while the other two represent corridors (See attached figures). The range of these critical habitat units extends in the south from Wauhab Ridge, Del Valle area to Cedar Mountain Ridge, in Santa Clara County; north to the northernmost extent of suitable habitat in Contra Costa County; west to the westernmost extent of the inner Coastal Range; and in the east, to the easternmost extent of suitable habitat. We could not depend solely on federally owned lands for critical habitat designation as they are limited in geographic location, size, and habitat quality. In addition to federally owned lands, we propose to designate critical habitat on non-Federal public lands and privately owned lands, including California Department of Parks and Recreation lands, regional and local park lands, and water district lands.

Areas proposed for designation as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical areas occupied by the species, are essential to conservation of the species, and are in need of special management considerations or protection.

In selecting areas of proposed critical habitat, we attempted to avoid developed areas such as towns, intensive agricultural areas such as vineyards, and other lands unlikely to contribute to Alameda whipsnake conservation. Given the short period of time in which we were required to complete this proposed rule, we were unable to map critical habitat in sufficient detail to exclude all such areas. However, within the delineated proposed critical habitat boundaries, only lands containing or lands likely to develop those habitat components essential for the primary biological needs of the Alameda whipsnake are considered critical habitat. Existing features and structures within the critical habitat boundary, such as buildings, roads, canals, railroads, large water bodies, and other features not currently containing or likely to develop these habitat components, are not considered critical habitat. Two areas, the north and south corridor (unit 6 connecting units 1 and 2; and unit 7 connecting units 3 and 5), contain some urban development. These two corridors are extremely narrow, and, therefore, maintaining as much area within these corridors as possible to ensure the long-term connectivity between whipsnake populations is important. As stated above, urban structures that occur within these two units are not considered critical habitat for the Alameda whipsnake. These two units may not provide sufficient habitat necessary to allow for breeding, and offer limited opportunities of foraging and sheltering. However, these areas should be considered critical habitat as they provide for the vital function of dispersal.

We considered the existing status of lands in designating areas as critical habitat. Section 10(a) of the Act authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Currently, no approved HCPs cover the Alameda whipsnake or its habitat. However, we expect critical habitat may be used as a tool to help identify areas within the range of the Alameda whipsnake that are most critical for the conservation of the species. We will encourage development of HCPs for such areas on non-Federal lands because we consider HCPs to be one of the most important methods through which non-Federal landowners can resolve endangered species conflicts. We provide technical assistance and work closely with applicants throughout development of HCPs to help identify special management considerations for the Alameda whipsnake. We intend for HCPs to provide a package of protection and management measures sufficient to address the conservation needs of the species.

We are currently drafting a recovery plan for the Alameda whipsnake. Recovery actions proposed within this draft recovery plan will include a more thorough analysis of recovery needs of the Alameda whipsnake. Therefore, we may amend critical habitat at a later date based on information gained through the recovery planning process.

In summary, the proposed critical habitat areas described below constitute our best assessment of areas needed for the species' conservation.

Proposed Critical Habitat Designation

The approximate area of proposed critical habitat by county and land ownership is shown in Table 1. Proposed critical habitat includes Alameda whipsnake habitat throughout the species' range in the United States (i.e., Contra Costa, Alameda, San Joaquin, and Santa Clara Counties, California). Lands proposed are under private, State, and Federal ownership, with Federal lands including lands managed by the Bureau of Land Management and the U.S.Department of Energy. Lands proposed as critical habitat have been divided into seven Critical Habitat Units. In determining areas that are essential for the survival and recovery of the species, we used the best scientific information available. This information included habitat suitability and site-specific species information. To date, only initial research has been done to identify and define specific habitat needs of Alameda whipsnakes, and no comprehensive surveys have been conducted to quantify their distribution or abundance. Only limited and preliminary habitat assessment and whipsnake presence work has begun on the Department of Energy's Lawrence Livermore National Laboratory Site 300, East Bay Regional Park District's Tilden Park, San Francisco Water District's San Antonio Reservoir, Contra Costa Water District's Los Vaqueros Reservoir, East Bay Municipal Utility District's San Leandro Watershed and Siesta Valley, Pleasanton Ridge Conservation Bank, and Signature Properties' Bailey Ranch. Some small parcels have also been surveyed; however, these surveys were in conjunction with development and, in most cases, that habitat has been destroyed.

We emphasized areas containing most of the verified Alameda whipsnake occurrences, especially recently identified locations. To maintain genetic and demographic interchange that will help maintain the viability of a regional metapopulation, we included corridor areas that allow movement between areas supporting Alameda whipsnakes. These corridors or connecting areas, while supporting some habitat suitable for foraging, shelter, breeding, and maturation, were primarily included to facilitate dispersal.

TABLE 1

[Approximate area encompassing proposed critical habitat in hectares (ha) (acres (ac)) by county and land ownership. Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within.]

County	Federal land*	Local/State land	Private land	Total
Alameda	202 ha (500 ac)	26,440 ha (65,492 ac)	56,166 ha (139,124 ac)	82,808 ha (205,116 ac)
Contra Costa	32 ha (80 ac)	31,970 ha (79,189 ac)	35,276 ha (87,378 ac)	67,278 ha (166,647 ac)
San Joaquin	495 ha (1,225 ac)	525 ha (1,300 ac)	4,945 ha (12,250 ac)	5,965 ha (14,775 ac)

TABLE 1—Continued

[Approximate area encompassing proposed critical habitat in hectares (ha) (acres (ac)) by county and land ownership. Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within.]

County	Federal land*	Local/State land	Private land	Total
Santa Clara	NA	4,037 ha (10,000 ac)	4,106 ha (10,170 ac)	8,143 ha (20,170 ac)
Total	729 ha (1,805 ac)	62,972 ha (155,981 ac)	100,493 ha (248,922 ac)	164,194 ha (406,708 ac)

*Includes the Bureau of Land Management and Department of Energy land.

A brief description of each critical habitat unit and our reasons for proposing those areas as critical habitat for the Alameda whipsnake are given below:

Unit 1: Tilden-Briones Unit

Unit 1 encompasses approximately 16,113 ha (39, 815 ac) within the Tilden-Briones unit and is the most northwestern unit of the five Alameda whipsnake metapopulations and represents primary breeding, feeding, and sheltering habitat for the whipsnake. Most of this unit occurs in Contra Costa County, except for the southwestern tip which occurs in Alameda County. This unit is bordered to the north by State Highway 4 and the cities of Pinole, Hercules, and Martinez; to the south by State Highway 24 and the City of Orinda Village; to the west by Interstate 80 and the cities of Berkeley, El Cerrito, and Richmond; and to the east by Interstate 680 and the City of Pleasant Hill. A substantial amount of public land exists within this unit, including East Bay Regional Park District's Tilden, Wildcat, and Briones Regional Parks and East Bay Municipal Utilities District watershed lands.

Unit 2: Oakland-Las Trampas Unit

Unit 2 encompasses approximately 21,922 ha (54,170 ac) within the Oakland-Las Trampas unit and occurs south of the Tilden-Briones unit and north of the Hayward-Pleasanton Ridge unit and represents primary breeding, feeding, and sheltering habitat for the Alameda whipsnake. This unit is split evenly between Alameda and Contra Costa Counties. This unit is surrounded to the north by State Highway 24 and the cities of Orinda, Moraga, and Lafayette; to the south by Interstate Highway 580 and the City of Castro Valley; to the West by State Highway 13 and Interstate Highway 580 and the cities of Oakland and San Leandro; and to the east by Interstate Highway 680 and the cities of Danville, San Ramon, and Dublin. The Oakland-Las Trampas unit also contains substantial amounts of public land including East Bay Regional Park District's Redwood and Anthony Chabot Regional Parks, Las Trampas Regional Wilderness, and additional East Bay Municipal Utilities District watershed lands.

Unit 3: Hayward-Pleasanton Ridge Unit

Unit 3 encompasses approximately 12,955 ha (32,011 ac) within the Hayward-Pleasanton Ridge unit and occurs south of the Oakland-Las Trampas unit and northwest of the Sunol-Cedar Mountain unit and represents primary breeding, feeding, and sheltering habitat for the Alameda whipsnake. This unit occurs solely in Alameda County. This unit is surrounded by Interstate Highway 580 to the north; Niles Canyon Road (State Highway 84) to the south; the cities of Hayward and Union City to the west and Interstate Highway 680 and the City of Pleasanton to the east. This unit is bisected by Palomares Canyon Road, which runs from Interstate Highway 580 to Niles Canyon Road. Greater than 30 percent of this unit occurs within public ownership including Garin, Dry Creek, and Pleasanton Ridge Regional Parks and other East Bay Regional Park District holdings. The privately owned Pleasanton Ridge Conservation Bank also occurs in the northeastern section of this unit.

Unit 4: Mount Diablo-Black Hills Unit

Unit 4 encompasses approximately 40,386 ha (99,794 ac) within the Mount Diablo-Black Hills unit and completely encompasses Mount Diablo State Park and surrounding lands and represents primary Alameda whipsnake breeding, feeding, and sheltering habitat. A majority of this unit occurs in Contra Costa County, however the southern tip of this unit dips into Alameda County. This unit is surrounded by State Highway 4 and the cities of Clayton, Pittsburg and Antioch to the north; open grassland within Tassajara Valley just below the Alameda/Contra Costa County line to the south; the cities of Concord, Walnut Creek, and Danville to the west; and, to the east, by large expanses of grassland occurring west of State Highway 4, near the cities of Oakley and Brentwood. This unit contains large expanses of public lands including two small Bureau of Land Management parcels; Mount Diablo State Park; Contra Costa Water District's Los Vaqueros Reservoir watershed; and Contra Loma, Black Diamond Mines, Morgan Territory, and Round Valley Regional Parks, and other East Bay Regional Park District holdings. Other public lands include lands owned by the Save Mount Diablo Foundation and the City of Walnut Creek. Two large, privately owned gravel quarries occur within this unit.

Unit 5: Sunol-Cedar Mountain Unit

Unit 5 encompasses approximately 69,335 ha (171,328 ac) within the Sunol-Cedar Mountain unit and is the largest and the southernmost of the seven critical habitat units and represents primary breeding, feeding, and sheltering habitat for the Alameda whipsnake. A majority of this unit occurs in Alameda County, however it does overlap with western San Joaquin and northern Santa Clara Counties. The northern boundary of this unit runs parallel to State Highway 84 and Corral Hollow Road, south of the cities of Pleasanton and Livermore and Tesla Road. The southern boundary lies below Calaveras Reservoir and captures all of Wauhab and Cedar Ridges in Santa Clara County and stretches to the east, north of the Alameda-San Joaquin-Santa Clara-Stanislaus County intersection. The western boundary lies east of Interstate Highway 680 and the greater San Jose urban areas. The eastern boundary lies within San Joaquin County a few miles east of the Alameda County line. This unit includes East Bay Regional Park District's Sunol, Mission Peak, Ohlone, Camp Ohlone, and Del Valle complex, and San Francisco Water District's Del Valle (San Antonio Reservoir) watershed. In addition, the Department of Energy's Site 300 and California Department of Parks and Recreation's Carnegie Recreation Area occur within the unit.

Unit 6: Caldecott Tunnel Unit

Unit 6 encompasses approximately 2,203 ha (5,445 ac) within the Caldecott Tunnel unit and occurs between units 1 and 2 where State Highway 24 tunnels under the Berkeley Hills for approximately 1.2 kilometers (4,000 feet) and represents a connector between units 1 and 2. This unit occurs solely in Contra Costa County. All suitable Alameda whipsnake habitat that occurs in this unit is privately owned.

Unit 7: Niles Canyon/Sunol Unit

Unit 7 encompasses approximately 1,677 ha (4,145 ac) within the Niles Canyon/Sunol unit and occurs between units 3 and 5 and lies south of State Highway 84 (Niles Canyon Road); north and west of Interstate 680; and east of the City of Fremont and represents a connector between units 3 and 5. This unit occurs solely in Alameda County. This unit includes East Bay Regional Park District's Vargus Plateau and San Francisco Water District watershed lands. Impediments to whipsnake movement between units 3 and 7 include Alameda Creek, a 0.3–0.6-meter (12–24-inch) high concrete barrier that lies south of Niles Canyon Road and north of Alameda Creek, railroad tracks that run along both sides of Alameda Creek, and heavy vehicular traffic along Niles Canyon Road.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

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

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. 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. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the Alameda whipsnake or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Army Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.,* Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the Alameda whipsnake is appreciably diminished. We note that such activities may also jeopardize the continued existence of the species. Such activities may include, but are not limited to:

(1) Removing, thinning, or destroying vegetation, whether by burning or mechanical, chemical, or other means (*e.g.,* fuels management, bulldozing, herbicide application, grazing, etc.) that have not been approved by the Service, exclusive of routine clearing of fuel breaks around urban boundaries that were constructed before the listing of the whipsnake on December 5, 1997;

(2) Water transfers, diversion, or impoundment, groundwater pumping, irrigation, or other activity that causes barriers or deterrents to dispersal, inundates habitat, or significantly converts habitat (*e.g.,* conversion to urban development, vineyards, landscaping);

(3) Recreational activities that significantly deter the use of suitable

habitat areas by Alameda whipsnakes or alter habitat through associated maintenance activities (*e.g.,* off-road vehicle parks, golf courses, and hiking, mountain biking, and horseback riding trails);

(4) Sale, exchange, or lease of Federal land containing suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded; and

(5) Construction activities that destroy or appreciably degrade suitable habitat (*e.g.,* urban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying, and associated reclamation activities).

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, if occupied habitat becomes unoccupied in the future, there is a potential benefit to critical habitat in such areas.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Designation of critical habitat could affect Federal agency activities including, but not limited to:

(1) Sale, exchange, or lease of lands owned by the Bureau of Land Management or the Department of Energy;

(2) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(3) Regulation of water flows, water delivery, damming, diversion, and channelization by the Bureau of Reclamation and the Army Corps of Engineers;

(4) Regulation of grazing, recreation, or mining by the Bureau of Land Management;

(5) Funding and implementation of disaster relief projects by the Federal Emergency Management Agency, including vegetation clearing to reduce the risk of a catastrophic wildfire event;

(6) Funding and regulation of new road construction by the Federal Highways Administration;

(7) Funding of low-interest loans to facilitate the construction of low income housing by the Department of Housing and Urban Development;

(8) Clearing of vegetation by the Department of Energy;

(9) Promulgation of air and water quality standards under the Clean Air Act and the Clean Water Act and the cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) by the U.S. Environmental Protection Agency; and

(10) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service for Habitat Conservation Plans.

Relationship to Incidental Take Permits Issued Under Section 10

As stated earlier, there are no approved HCPs within the proposed critical habitat designation. However, future HCPs are probable.

In the event that future HCPs covering the Alameda whipsnake are developed within the proposed critical habitat, we will work with applicants to ensure the HCPs provide for protection and management of habitat areas essential for the conservation of the Alameda whipsnake, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the Alameda whipsnake. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (*e.g.,* counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of HCPs to identify appropriate conservation management and lands essential for the long-term conservation of the Alameda whipsnake. Preliminary HCPs exist for listed and non-listed species within the range of the Alameda whipsnake in areas proposed herein as critical habitat. By definition, these HCPs, coupled with appropriate adaptive management, should provide for the conservation of the species. We are soliciting comments on whether future approval of HCPs, and issuance of section 10(a)(1)(B) permits for the Alameda whipsnake, should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. Although we could not identify any incremental effects of this proposed critical habitat designation above those impacts of listing, we will conduct an economic analysis to further evaluate this finding. We will conduct the economic analysis for this proposal prior to a final determination. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time to accept comments on the economic analysis or further comment on the proposed rule.

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat for the Alameda whipsnake as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Alameda whipsnakes and their habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for the Alameda whipsnake such as 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).

Additionally, we are seeking comments on critical habitat designation relative to future HCPs, similar to our request in the coastal California gnatcatcher proposed rule (65 FR 5945). Future conservation planning efforts are possible within the range of the Alameda whipsnake in areas we are proposing as critical habitat. In these areas, we propose to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection. We invite comments on the appropriateness of this approach and other approaches for critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the Alameda whipsnake:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the Alameda whipsnake, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of HCPs when the plans are approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments, including written and e-mail, must be received in our Sacramento Fish and Wildlife Office by May 8, 2000.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Should a public hearing be requested, then we will announce the date, time, and place for the hearing in the **Federal Register** and local newspapers at least 15 days prior to the hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice

contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the ''Supplementary Information'' section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Alameda whipsnake was listed as an endangered species in 1997. No formal section 7 consultations with other Federal agencies have been conducted. In addition, no HCPs for areas in which the Alameda whipsnake occurs have been done.

The areas proposed for critical habitat are currently occupied by the Alameda whipsnake. Under the Endangered Species Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; the Act does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning ''take'' of the species).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Alameda whipsnake since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is occupied. Because of the potential for impacts on other Federal agencies activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition (from critical habitat designation) will have any incremental effects.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 2.—IMPACTS OF ALAMEDA WHIPSNAKE LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3].	Activities such as removing, thinning, or destroying Alameda whipsnake habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (*e.g.*, fuels management, bulldozing, herbicide application, grazing, etc.); water transfers, diversion, or impoundment, groundwater pumping, irrigation, or other activity that causes barriers or deterrents to dispersal, inundates habitat, or significantly converts habitat (*e.g.*, conversion to urban development, vineyards, landscaping); recreational activities that significantly deter the use of suitable habitat areas by Alameda whipsnakes or alter habitat through associated maintenance activities (*e.g.*, off-road vehicle parks, golf courses, and hiking, mountain biking, and horseback riding trails); sale, exchange, or lease of Federal land that contains suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded; and construction activities that destroy or appreciably degrade suitable habitat (*e.g.*, urban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying and associated reclamation activities) that the Federal Government carries out.	None.

TABLE 2.—IMPACTS OF ALAMEDA WHIPSNAKE LISTING AND CRITICAL HABITAT DESIGNATION—Continued

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Private and other non-Federal Activities Potentially Affected [4].	Activities such as removing, thinning, or destroying Alameda whipsnake habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (*e.g.*, fuels management, bulldozing, herbicide application, grazing, etc.); water transfers, diversion, or impoundment, groundwater pumping, irrigation, or other activity that causes barriers or deterrents to dispersal, inundates habitat, or significantly converts habitat (*e.g.*, conversion to urban development, vineyards, landscaping, etc.); recreational activities that significantly deter the use of suitable habitat areas by Alameda whipsnakes or alter habitat through associated maintenance activities (*e.g.*, off-road vehicle parks, golf courses, and hiking, mountain biking, and horseback riding trails); and construction activities that destroy or appreciably degrade suitable habitat (*e.g.*, urban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying and associated reclamation activities) that require a Federal action (permit, authorization, or funding).	None.

[1] This column represents the activities potentially affected by listing the Alameda whipsnake as a threatened species (December 5, 1997; 62 FR 64306) under the Endangered Species Act.
[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by Federal, State, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Sale, exchange, or lease of lands owned by the Bureau of Land Management or the Department of Energy;

(2) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(3) Regulation of water flows, water delivery, damming, diversion, and channelization by the Bureau of Reclamation and the Army Corps of Engineers;

(4) Regulation of grazing, recreation, or mining by the Bureau of Land Management;

(5) Funding and implementation of disaster relief projects by the Federal Emergency Management Agency, including vegetation clearing to reduce the risk of a catastrophic wildfire event;

(6) Funding and regulation of new road construction by the Federal Highways Administration;

(7) Funding of low-interest loans to facilitate the construction of low-income housing by the Department of Housing and Urban Development;

(8) Clearing of vegetation by the Department of Energy;

(9) Promulgation of air and water quality standards under the Clean Air Act and the Clean Water Act and the cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act by the U.S. Environmental Protection Agency; and

(10) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects beyond those resulting from listing the species.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a

''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Alameda whipsnake. Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California, as well as during the listing process. We will continue to coordinate any future designation of critical habitat for the Alameda whipsnake with the appropriate State agencies. The designation of critical habitat the Alameda whipsnake imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act, and plan public meetings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Alameda whipsnake.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and the Department of the Interior's requirement at 512 DM 2 we understand that recognized Federal Tribes must be related to on a Government-to-Government basis. The 1997 Secretarial Order on Native Americans and the Endangered Species Act clearly states that Tribal lands should not be designated unless absolutely necessary for the conservation of the species. According to the Secretarial Order, ''Critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.'' The proposed designation of critical habitat for the Alameda whipsnake does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Jason Davis and Heather Bell, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In 17.11(h) revise the entry for ''Whipsnake, Alameda'' under ''REPTILES'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
*	*	*	*	*	*	*	
Whipsnake, Alameda (=striped racer).	*Masticophis lateralis euryxanthus.*	U.S.A. (CA)	Entire	T	628	17.95(c)	NA
*	*	*	*	*	*	*	

3. Amend 17.95(c) by adding critical habitat for the Alameda whipsnake (*Masticophis lateralis euryxanthus*) in the same alphabetical order as this species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) Reptiles.

* * * * *

ALAMEDA WHIPSNAKE (*Masticophis lateralis euryxanthus*)

1. Critical habitat units are depicted for Alameda, Contra Costa, San Joaquin and Santa Clara Counties, California, on the maps below.

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The primary constituent elements are found, or could develop, in areas that support or have the potential to support scrub communities including mixed chaparral, chamise-redshank chaparral, and coastal scrub; and annual grassland and various oak woodlands that lie adjacent to scrub habitats. In addition, the primary constituent elements for the Alameda whipsnake may be found in grasslands and various oak woodlands that are linked to scrub habitats by substantial rock outcrops or riparian corridors. Other habitat features that provide a source of cover for the whipsnake during dispersal or lie in reasonable proximity to scrub habitats and contain habitat features (*e.g.*, rock outcrops) that support adequate prey populations may also contain primary constituent elements for the Alameda whipsnake.

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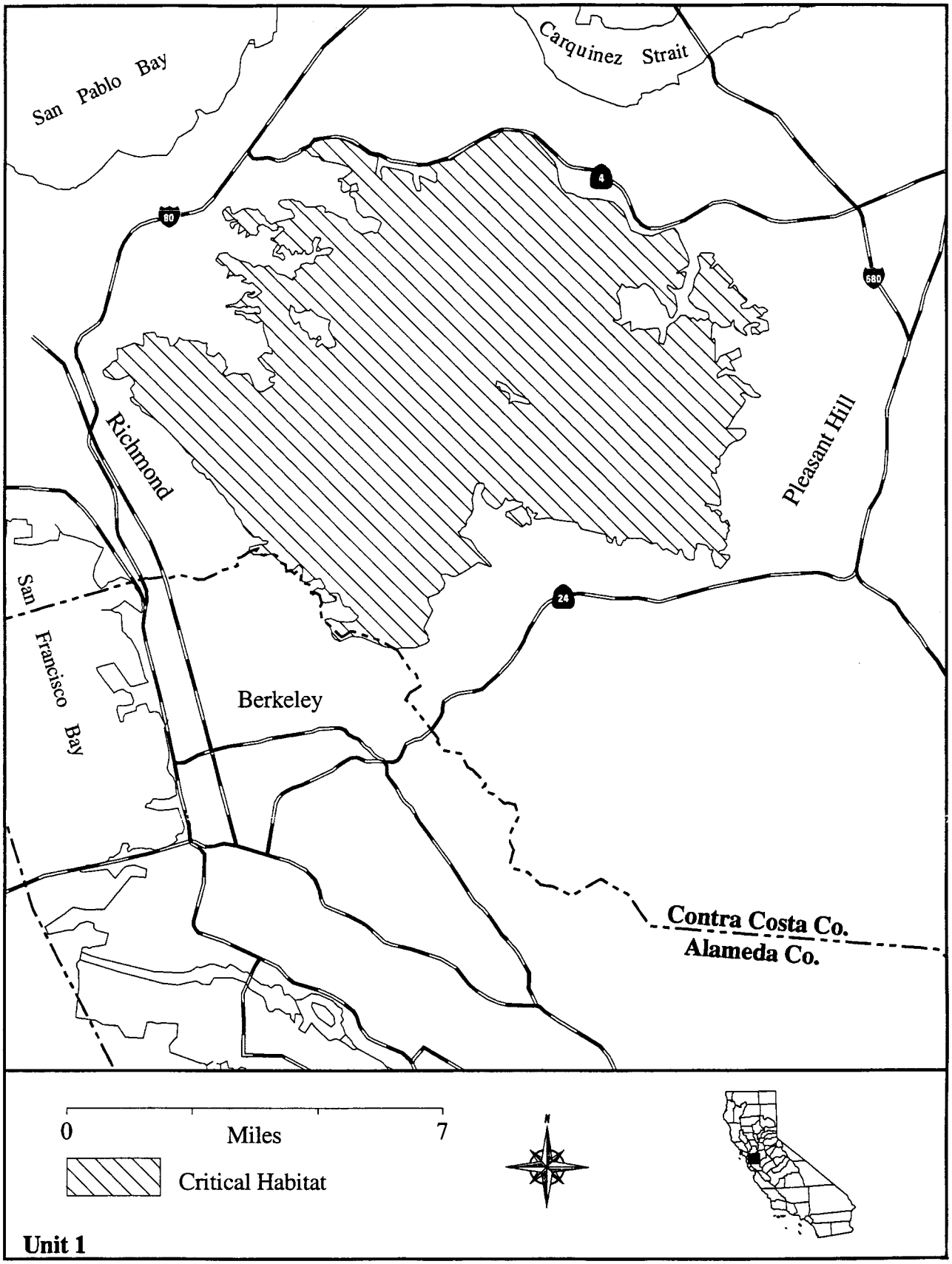

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Map Unit 1: Alameda and Contra Costa counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T.2 N., R.4 W., S½

sec. 13, SE¼ sec. 23, N½ SE¼ sec. 24, sec. 25, N½ SE¼ sec. 26, E½ sec. 27, E½ sec. 34 secs. 35–36; T.2 N., R.3 W., S½ sec. 15, S½ sec. 16, SW¼ sec. 18, secs. 19–22, S½ NW¼ sec. 23, SW¼ sec. 24, secs. 25–36; T.2 N., R.2 W., S½ sec. 30, sec. 31, SW¼ sec 32; T.1 N., R.4 W., secs. 1–2, S½ sec. 3, sec. 4, SE¼ sec. 5, N½ SE¼ sec. 8, secs. 9–15, N½ sec. 16, N½ SE¼ sec. 21, secs. 22–26, NE¼ sec. 27, N½ SE¼ sec. 36; T.1 N., R.3 W., secs. 1–24, N½ sec. 25, N½ sec. 26, N½ sec. 27, S½ NW¼ sec. 28, secs. 29–32; T.1. N., R.2 W., secs. 5–7, S½ NW¼ sec. 8, W½ sec. 17, secs. 18–19, W½ sec. 29, sec. 30; T.1 S., R.3 W., N½ sec. 5, N½ sec. 6.

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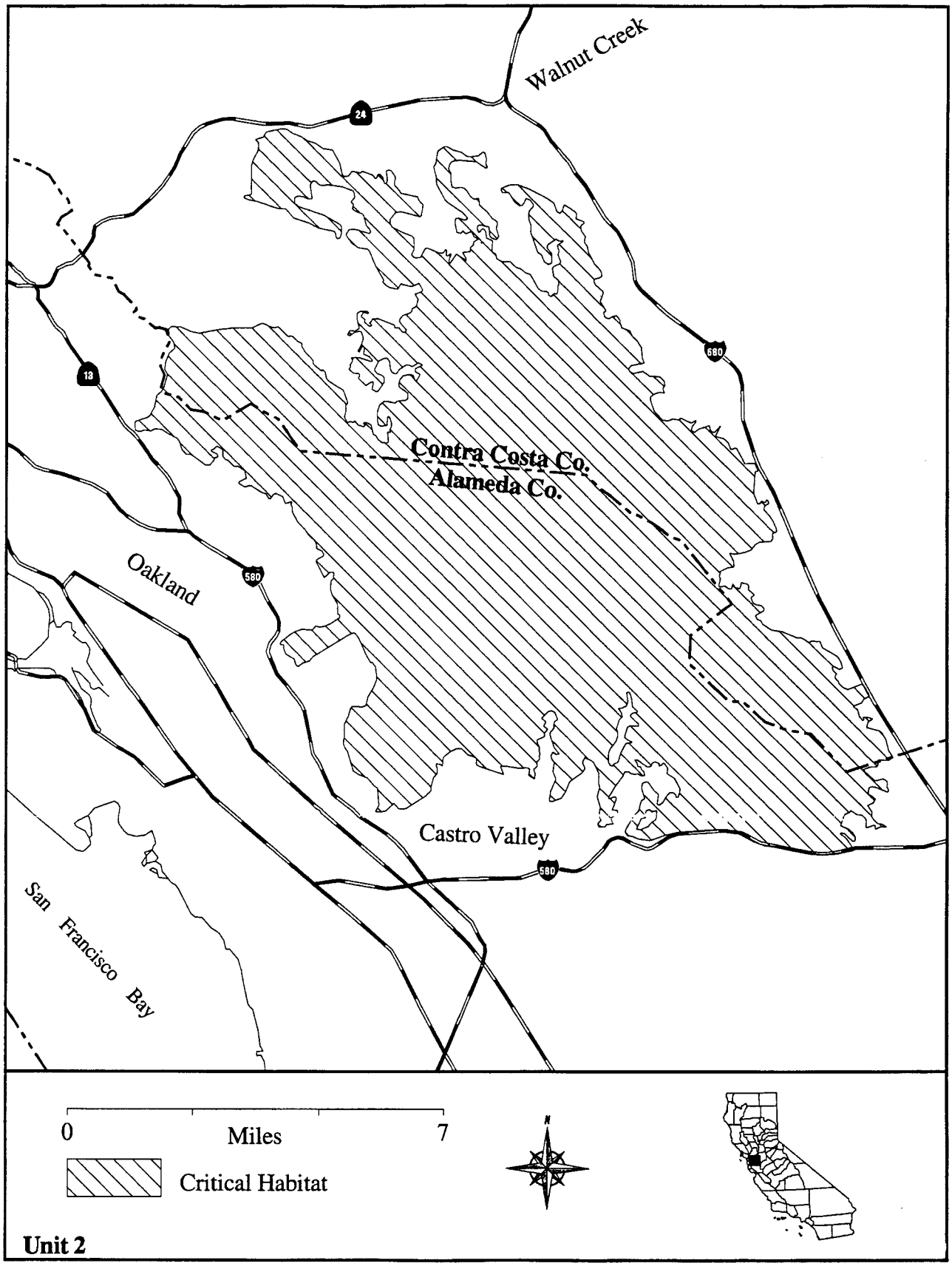

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Map Unit 2: Alameda and Contra Costa Counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 1 N., R. 3 W.,

SE¼ sec. 35, S½ NW¼ sec. 36; T. 1. N., R. 2 W., SW¼ sec. 31, S½ sec. 33, SW¼ sec. 34; T. 1 S., R. 3 W., sec. 1, E½ sec. 2, NE¼ sec. 12, SW½ sec. 13, S½ sec. 14, S½ sec. 15, secs. 22–27, SE¼ sec. 28, NE¼ sec. 34, N½ SE¼ sec. 35, sec. 36; T. 1 S., R. 2 W., S½ sec. 2, secs. 3–6, N½ SE¼ sec. 7, secs. 8–11, SW¼ sec. 12, S½ NW sec. 13, secs. 14–17, SE¼ sec. 18, S½ NE¼ sec. 19, secs, 20–36; T.1 S., R. 1 W., SW¼ sec. 19, SW¼ sec. 29, S½ NW¼ sec. 30, secs. 31–32; T. 2 S., R. 3 W., N½ SE¼ sec. 1, NE¼ sec. 12, S½ sec. 13, N½ sec. 24; T. 2 S., R. 2 .W., secs. 1–18, E½ sec. 19, secs. 20–30, N½ SE ¼ sec. 31, sec. 32, N½ sec. 33, N½ sec. 34, N½ SW¼ sec. 35, sec. 36; T. 2 S., R. 1 W., W¼ sec. 4, secs. 5–6, S½ sec. 16, secs. 17–21, S½ NW¼ sec. 22, W½ sec. 26, secs. 27–34, W½ sec. 35; T. 3 S., R. 1 W., NW¼ sec. 2, secs. 3–4, N½ SE¼ sec. 5, N½ sec. 6; T. 3 S., R. 2 W., N½ sec. 1.

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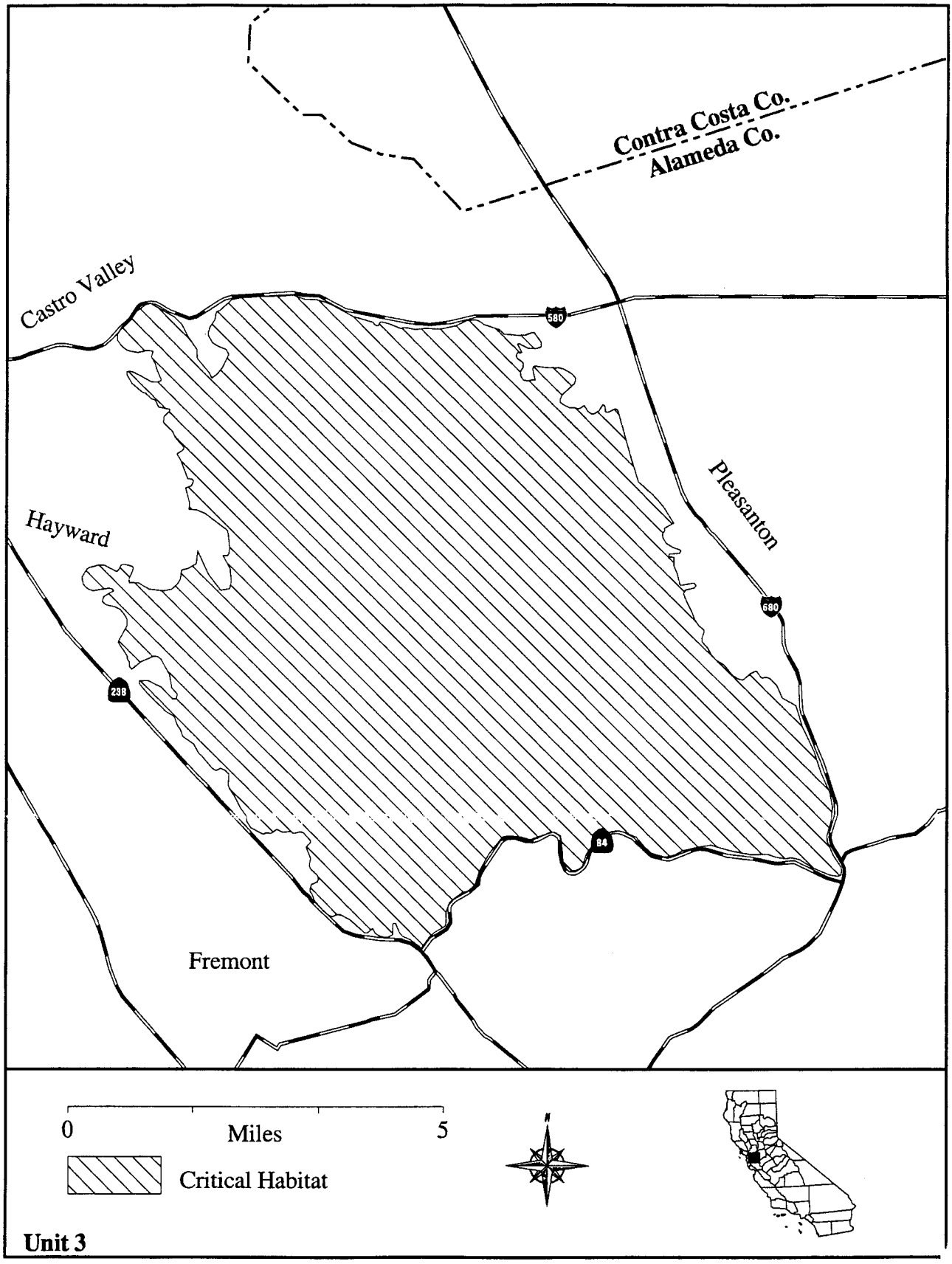

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Map Unit 3: Alameda County, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 3 S., R. 2 W., sec. 1, sec.

12, E½ sec. 13, SW¼ sec. 24, sec. 25, NE¼ sec. 26, secs. 35–36; T. 3 S., R. 1 W., SW¼ sec. 2, S½ sec. 3, S½ sec. 4, S½ NW¼ sec. 5, S½ NE¼ sec. 6, secs. 7–11, SW¼ sec. 12, secs. 13–36; T. 3 S., R. 1 E., W½ sec. 19, S½ NW¼ sec. 30, sec. 31, S½ sec. 32; T. 4 S., R. 2 W., NE¼ sec. 1; T. 4 S., R. 1 W., secs. 1–6, NE¼ sec. 7, secs. 8–12, NE¼ sec. 14, N½ SW¼ sec. 15, sec. 16, N½ SE¼ sec. 17, NE¼ sec. 21; T. 4 S., R. 1 E., W½ sec. 4, secs. 5–8, W½ sec. 9, NW¼ sec. 16.

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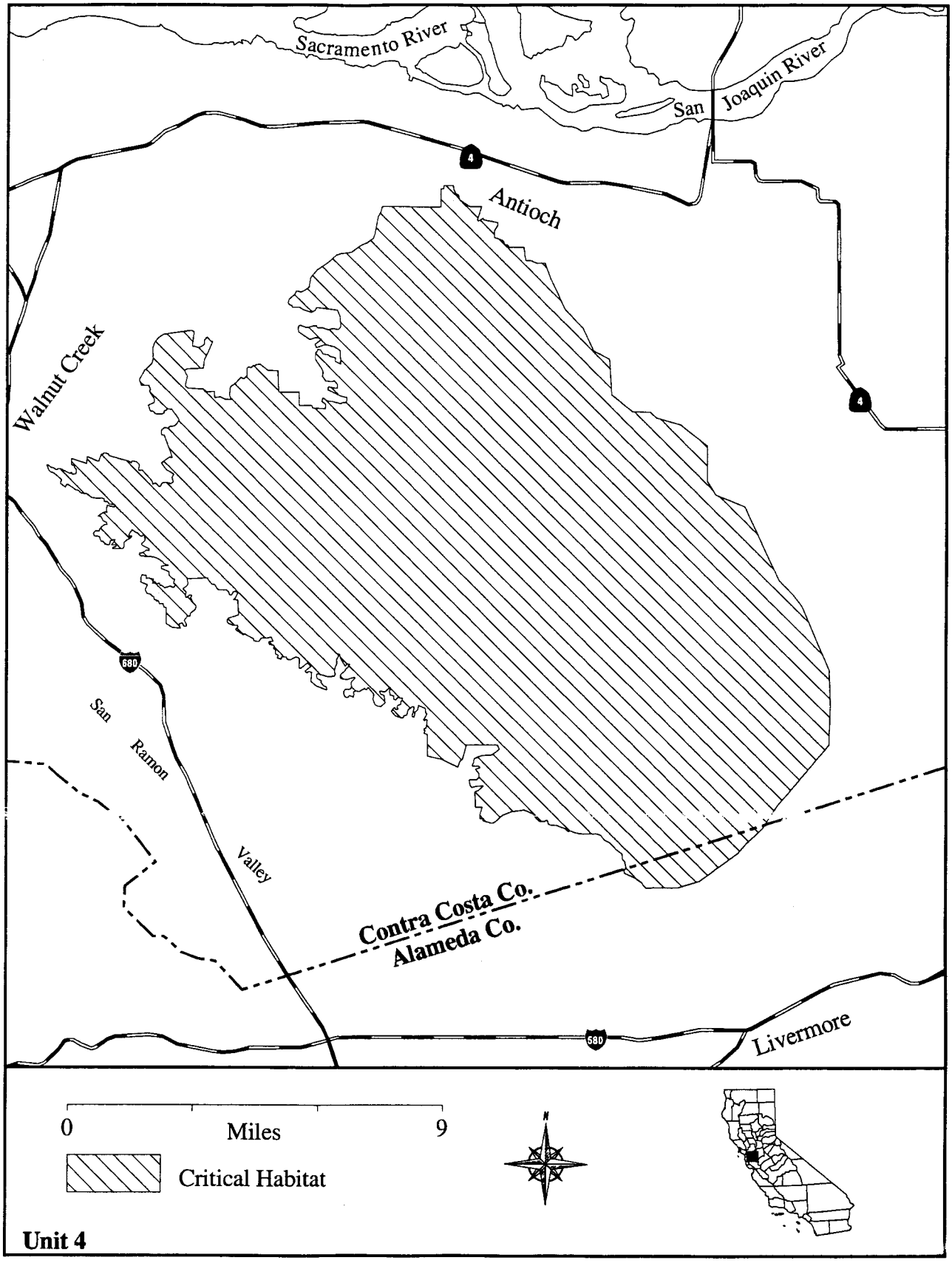

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Map Unit 4: Alameda and Contra Costa Counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 2 N., R. 1 W.,

SE¼ sec. 36; T. 2 N., R. 1 E., S½ NW¼ sec. 27, S½ NE¼ sec. 28, S½ sec. 29, SE¼ sec. 30, S½ NE¼ sec. 31, secs. 32–34, S½ sec. 35; T. 1 N., R 2 W., S½ sec. 25, SE¼ sec. 26, N½ sec. 36; T. 1 N., R. 1 W., sec. 1, SE¼ sec. 2, SE¼ sec. 8, S½ sec. 9, sec. 12, N½ SE¼ sec.13, W½ sec. 14, S½ NE¼ sec. 15, sec. 17, N½ SE¼ sec. 20, secs. 21–28, E½ SW¼ sec. 29, S½ sec. 30, sec. 31, secs. 32–36; T. 1 N., R. 1. E., W½ sec. 1, secs. 2–11, sec. 12, secs. 13–36; T. 1 N., R. 2 E., SW¼ sec. 7, W½ sec. 18, sec. 19, S½ sec. 20, SW¼ sec. 21, secs. 28–33, S½ sec. 34; T.1 S., R. 1 W., secs. 1–5, N½ SE¼ sec. 6, sec. 8, N½ SW¼ sec. 9, secs. 10–15, NW¼ sec. 16, NE¼ sec. 17, N½ SE¼ sec. 23, sec. 24, N½ sec. 25; T. 1 S., R. 1 E., secs. 1–29, N½sec. 30, NE¼ sec. 32, sec. 33–36; T. 1 S., R. 2 E., SW¼ sec. 2, secs. 3–10, S½ NW¼ sec. 11, W½ sec. 13, secs. 14–36; T. 2 S., R. 1 E., secs. 1–3, N½ sec. 10, N½ sec. 11, sec. 12; T. 2 S., R. 2 E., NW¼ sec. 1, secs. 2–10, W½ sec. 11, N½ sec. 15, sec. 16–17, E½ sec. 18.

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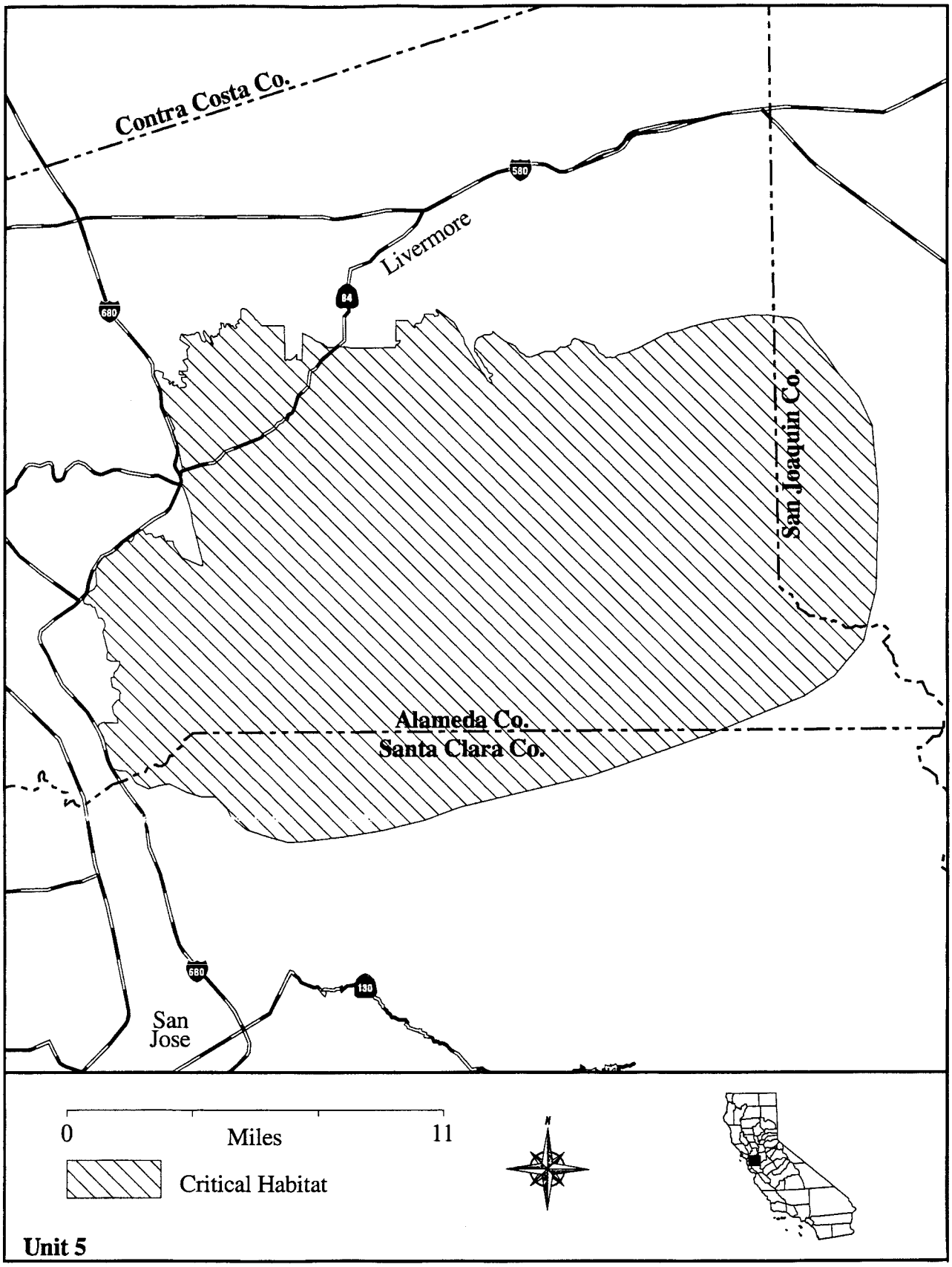

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Map Unit 5: Alameda, Contra Costa, San Joaquin, and Santa Clara Counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian,

California: T.3 N., R.1 E., SE¼ sec. 21, S½ sec. 22, S½ NW¼ sec. 23, SW¼ sec. 24, S½ NW¼ sec. 25, secs. 26–27, E½ sec. 28, SE¼ sec. 29, NE¼ sec. 32, secs. 33–36; T.3 S., R. 2 E., SW¼ sec. 19, SE¼ sec. 21, S½ NE¼ sec. 22, S½ NW¼ sec. 23, SE¼ sec. 24, secs. 25–36; T.3 S., R.3 E., S½ sec. 24, secs. 25–26, S½ NE¼ sec. 27, S½ NW¼ sec. 28, S½ NE¼ sec. 29, S½ NW¼ sec. 30, secs. 31–36; T.3 S., R.4 E., S½ sec. 19, S½ sec. 20, S½ sec. 21, SW¼ sec. 27, secs. 28–33, S½ NW¼ sec. 34; T.4 S., R.1 W., E½ sec. 25, E½ sec. 36; T.4 S, R.1 E., secs. 1–4, E½ sec. 9, secs. 10–15, E½ sec. 16, SE¼ sec. 19, S½ sec. 20, S½ NE¼ sec. 21, secs. 22–36; T.4 S., R.2 E., secs. 1–36; T.4 S., R.3 E., secs. 1–36; T.4 S., R.4 E., W½ sec. 2, secs. 3–10, W½ sec. 11, W½ sec. 11, W½ sec. 14, secs. 15–22,W½ sec. 23, W½ sec. 26, secs. 27–34, W½ sec. 35; T.5 S., R.1 E., secs. 1-29, N½ SE¼ sec. 30, N½ sec. 33, N½ SE¼ sec. 34, secs. 35–36; T.5 S., R.2 E., secs. 1–35, N½ SW¼ sec. 36; T.5 S., R.3 E., secs. 1–24, N½ sec. 26, N½ SW¼ sec. 27, secs. 28–30, N½ sec. 31, N½ sec. 32; T.5. S., R.4 E., W½ sec. 2, secs. 3–9, N½ SW¼ sec. 10, N½ SW¼ sec. 16, secs. 17–18, N½ sec. 19; T.6 S., R.1 E., sec. 1, N½ sec. 2; T.6 S., R.2 E., N½ sec. 3, N½ sec. 4, N½ sec. 5, N½ sec.6.

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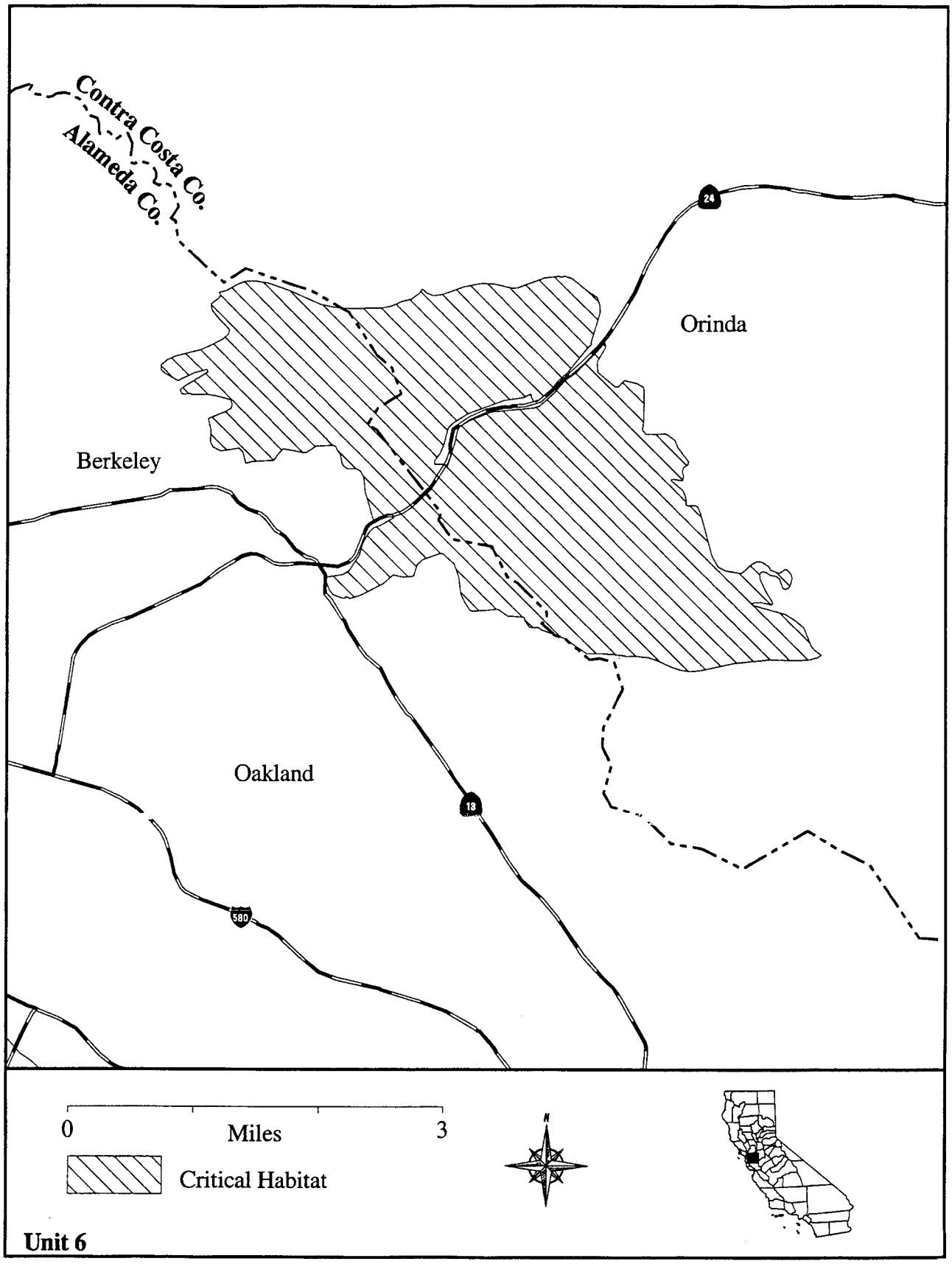

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Map Unit 6: Contra Costa County, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T.1 N., R.4 W., SE¼ sec. 36;

T.1 N., R.3 W., SW¼ sec. 31, S½ sec. 33; T.1 S., R.4 W., S½ NE ¼ sec. 1, NE¼ sec. 12; T.1 S., R.3 W., W½ sec. 3, secs. 4–6, N½ SE¼ sec. 7, secs. 8–10, secs. 14–15, N½ SE¼ sec. 16, N½ sec. 17, NE¼ sec. 18.

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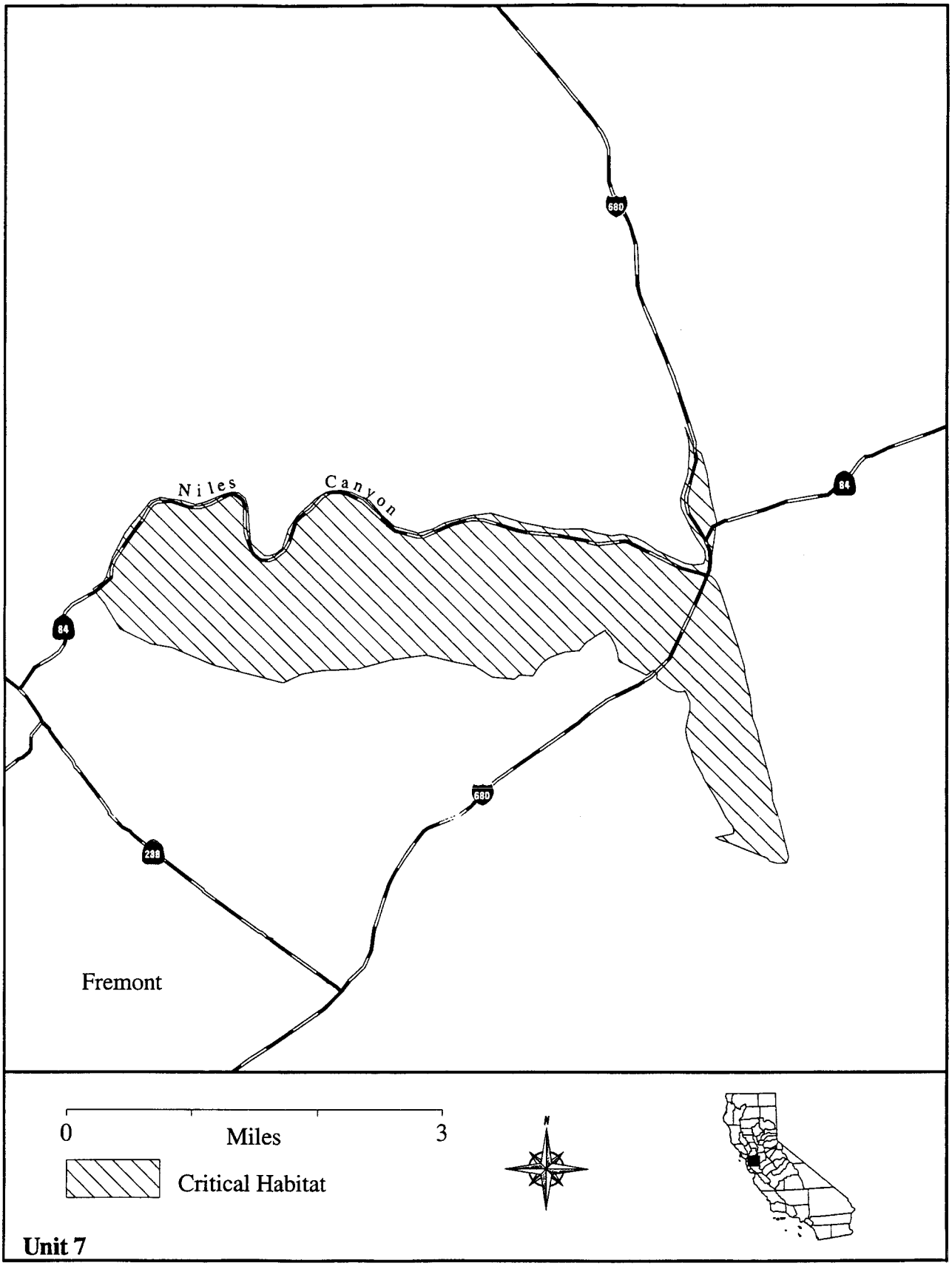

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Map Unit 7: Alameda County, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T.4 S., R.1 W., SE¼ sec. 10,

S½ sec. 11, S½ sec. 12, secs. 13–14, E½ sec. 15, NE¼ sec. 23, NW¼ sec. 24; T.4 S., R.1 E., S½ sec. 7, S½ sec. 8, sec. 9, secs. 16–18, NE¼ sec. 19, NE¼ sec. 20, sec. 21, W½ sec. 27, N½ sec. 28.

Dated: February 29, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–5414 Filed 3–7–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF97

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the San Diego Fairy Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the San Diego fairy shrimp (*Branchinecta sandiegonensis*), pursuant to the Endangered Species Act of 1973, as amended (Act). We propose designation of critical habitat within an approximately 14,771-hectare (36,501-acre) area for the San Diego fairy shrimp in San Diego and Orange Counties.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and may require special management considerations or protection. The primary elements for the San Diego fairy shrimp are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal.

If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments from all interested parties until May 8, 2000. Public hearing requests must be received by April 24, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

2. You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California.

3. You may send comments by electronic mail (e-mail) to fw1sdfs@fws.gov. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: [RIN number]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760/431–9440.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office at the above address; (telephone 760/431–9440; facsimile 760/431–5902).

SUPPLEMENTARY INFORMATION:

Background

The San Diego fairy shrimp (*Branchinecta sandiegonensis*) is a small aquatic crustacean (Order: Anostraca), restricted to vernal pools (pools that have water in them for only a portion of any given year) in coastal southern California and south to northwestern Baja California, Mexico. It is a habitat specialist found in small, shallow vernal pools and ephemeral (lasting a short time) basins that range in depth from approximately 5 to 30 centimeters (2 to 12) inches (Simovich and Fugate 1992; Hathaway and Simovich 1996). Water chemistry is also an important factor in determining fairy shrimp distribution (Belk 1977; Branchiopod Research Group 1996; Gonzales *et al.* 1996), hence, no individuals have been found in riverine or marine waters. All known localities are below 701 meters (2,300 feet) and are within 64 kilometers (km) (40 miles (mi)) of the Pacific Ocean.

San Diego fairy shrimp is one of the six groups of fairy shrimp known as branchinectids that occur in southern California (Simovich and Fugate 1992). The only other species of *Branchinecta* in southern California are the non-listed Lindahl's fairy shrimp (*B. lindahli*) and the federally threatened vernal pool fairy shrimp (*B. lynchi*). Male San Diego fairy shrimp are distinguished from males of other species of *Branchinecta* by differences found at the distal (located far from the point of attachment) tip of the second antennae. Females are distinguishable from females of other species of *Branchinecta* by the shape and length of the brood sac, and by the presence of paired dorsolateral (located on the sides, toward the back) spines on five of the abdominal segments (Fugate 1993).

Mature individuals lack a carapace (hard outer covering of the head and thorax) and have a delicate elongate body, large stalked compound eyes, and 11 pairs of swimming legs. They swim or glide gracefully upside down by means of complex wave-like beating movements of the legs that pass from front to back. Adult male San Diego fairy shrimp range in size from 9 to 16 millimeters (mm) (0.35 to 0.63 inches (in.)); adult females are 8 to 14 mm (0.31 to 0.55 in.) long. The second pair of antennae in males are greatly enlarged and specialized for clasping the females during copulation, while the second pair of antennae in the females are cylindrical and elongate. The females carry their eggs in an oval or elongate ventral brood sac (Eriksen and Belk 1999). Nearly all species of fairy shrimp feed on algae, bacteria, protozoa, rotifers, and bits of organic matter (Pennak 1989; Eng *et al.* 1990).

Adult San Diego fairy shrimp are usually observed from January to March; however, in years with early or late rainfall, the hatching period may be extended. The species hatches and matures within 7 days to 2 weeks depending on water temperature (Hathaway and Simovich 1996; Simovich and Hathaway 1997). The San Diego fairy shrimp disappear after about a month, but animals will continue to hatch if subsequent rains result in additional water or refilling of the vernal pools (Branchiopod Research Group 1996). The eggs are either dropped to the pool bottom or remain in the brood sac until the female dies and sinks. The ''resting'' or ''summer'' eggs are capable of withstanding temperature extremes and prolonged drying. When the pools refill in the same or subsequent rainy seasons, some but not

all of the eggs may hatch. Fairy shrimp egg banks in the soil may be composed of the eggs from several years of breeding (Donald 1983; Simovich and Hathaway 1997). Simovich and Hathaway (1997) found that vernal pools and ephemeral wetlands that support anostracans (*i.e.,* San Diego fairy shrimp), and occur in areas with variable weather conditions or filling periods (such as southern California), may hatch only a fraction of the total cyst (organisms in a resting stage) bank in any given year. Thus, reproductive success is spread over several seasons.

Vernal pools have a discontinuous occurrence in several regions of California (Keeler-Wolf *et al.* 1995), from as far north as the Modoc Plateau in Modoc County, south to the international border in San Diego County. Vernal pools form in regions with Mediterranean climates, where shallow depressions fill with water during fall and winter rains and then evaporate in the spring (Collie and Lathrop 1976; Holland 1976, 1988; Holland and Jain 1977, 1988; Thorne 1984; Zedler 1987; Simovich and Hathaway 1997). In years of high precipitation, overbank flooding from intermittent streams may augment the amount of water in some vernal pools (Hanes *et al.* 1990). Vernal pool studies conducted in the Sacramento Valley indicate that the contribution of subsurface or overland flows is significant only in years of high precipitation when pools are already saturated (Hanes and Stromberg 1996). Downward percolation of water in vernal pool basins is prevented by the presence of an impervious subsurface layer, such as a claypan, hardpan, or volcanic stratum (Holland 1976, 1988).

Researchers have found that vernal pools located in San Diego County are associated with five soil series types, Huerheuero, Olivenhain, Placentia, Redding, and Stockpen (Bauder and McMillan 1998). These soil types have a nearly impermeable surface or subsurface soil layer with a flat or gently sloping topography (Service 1998). Due to local topography and geology, the pools are usually clustered into pool complexes (Bauder 1986; Holland and Jain 1988). Pools within a complex are typically separated by distances on the order of meters, and may form dense, interconnected mosaics of small pools or a more sparse scattering of larger pools.

Vernal pool systems are often characterized by different landscape features including mima mound (miniature mounds) micro-topography, varied pool basin size and depth, and vernal swales (low tract of marshy land). Vernal pool complexes that support one too many distinct vernal pools are often interconnected by a shared watershed. This habitat heterogeneity (consisting of dissimilar elements or parts) generally ensures that some between-pool water flow continues.

San Diego County supports the largest number of remaining vernal pools occupied by the San Diego fairy shrimp. Scientists estimated that, historically, vernal pool soils covered approximately 208 hectares (ha) (520 acres (ac)) of San Diego County (Bauder and McMillan 1998). Based on available information at the time of listing, we estimate that fewer than 82 ha (202 ac) of occupied vernal pool habitat remain in the county, of which an estimated 70 percent occurs on military lands (Weir and Bauder 1991). Keeler-Wolf *et al.* (1995) concluded that the greatest recent losses of vernal pool habitat in San Diego County have occurred in Mira Mesa, Rancho Penasquitos, and Kearny Mesa, which accounted for 73 percent of all the pools destroyed in the region during the 7-year period between 1979 and 1986. Other substantial losses have occurred in the Otay Mesa area, where over 40 percent of the vernal pools were destroyed between 1979 to 1990. Similar to San Diego County, vernal pool habitat was once extensive on the coastal plain of Los Angeles and Orange Counties (R. Mattoni and T. Longcore, 1998). Unfortunately, there has been a near-total loss of vernal pool habitat in these areas (Ferren and Pritchett 1988; Keeler-Wolf *et al.* 1995).

Urban and water development, flood control, highway and utility projects, as well as conversion of wildlands to agricultural use, have eliminated vernal pools and/or their watersheds in southern California (Jones and Stokes Associates 1987). Changes in hydrologic pattern, overgrazing, and off-road vehicle use also imperil this aquatic habitat and the San Diego fairy shrimp. The flora and fauna in vernal pools or swales can change if the hydrologic regime is altered (Bauder 1986, 1987). Anthropogenic (of human origin) activities that reduce the extent of the watershed or that alter runoff patterns (*i.e.*, amounts and seasonal distribution of water) may eliminate the San Diego fairy shrimp, reduce their population sizes or reproductive success, or shift the location of sites inhabited by this species. The California Department of Fish and Game's Natural Diversity Data Base ranks the vernal pool habitat type in priority class G1-S1, which denotes communities in the State of California that occur over fewer than 809 ha (2,000 ac) globally.

Previous Federal Action

David Hogan, formerly of the San Diego Biodiversity Project in Julian, California; Dr. Denton Belk of Our Lady of the Lake University in San Antonio, Texas; and the Biodiversity Legal Foundation petitioned us to list the San Diego fairy shrimp as an endangered species, in a letter dated March 16, 1992. We received the petition on March 24, 1992. On August 4, 1994, we published a proposed rule in the **Federal Register** (59 FR 39874) to list the San Diego fairy shrimp as an endangered species. The proposed rule was the first Federal action on the San Diego fairy shrimp, and also constituted the 12-month petition finding, as required by section 4(b)(3)(B) of the Act. On February 3, 1997, we published a final rule determining the San Diego fairy shrimp to be an endangered species (62 FR 4925).

At the time of listing, we concluded that designation of critical habitat for the San Diego fairy shrimp was not prudent because such designation would not benefit the species. We were also concerned that critical habitat designation would likely increase the degree of threat from vandalism or other human-induced impacts. We were aware of several instances of apparently intentional habitat destruction that had occurred during the listing process. However, we have determined that the threats to this species, and its habitat, from specific instances of habitat destruction do not outweigh the broader educational and any potential regulatory and other possible benefits that designation of critical habitat would provide for this species. A designation of critical habitat will provide educational benefits by formally identifying those areas essential to the conservation of the species, and the areas likely to be the focus of our recovery efforts for the San Diego fairy shrimp. Therefore, we conclude that the benefits of designating critical habitat on lands essential for the conservation of the San Diego fairy shrimp will not increase incidences of vandalism above current levels for this species.

On October 14, 1998, the Southwest Center for Biological Diversity filed a lawsuit in Federal District Court for the Southern District of California for our failure to designate critical habitat for the San Diego fairy shrimp. On September 16, 1999, the Court ordered that ''On or before February 29, 2000, the Service shall submit for publication in the **Federal Register**, a proposal to withdraw the existing not prudent critical habitat determination together with a new proposed critical habitat

determination for the San Diego fairy shrimp'' (*Southwest Center for Biodiversity* v. *United States Department of the Interior et al.,* CV 98–1866) (S.D. Cal.).

Critical Habitat

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

We reconsidered our evaluation in the prudency determination of the threats posed by vandalism and determined that instances of vandalism have not increased since the listing of the San Diego fairy shrimp. Therefore, we find that designating critical habitat for the San Diego fairy shrimp is prudent.

Critical habitat receives protection under the Act through the prohibition against destruction or adverse modification of critical habitat as set forth 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 that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal action, critical habitat designation would not afford any protection under the Act against such activities.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans, and through section 7 consultation and section 10 permits.

Critical habitat identifies specific units that are essential to the conservation of a listed species and that may require special management considerations or protection. All of the proposed critical habitat areas are considered essential to the conservation of the San Diego fairy shrimp as described in the Recovery Plan for Vernal Pools of Southern California (Recovery Plan) (Service 1998). The proposed critical habitat units include a mosaic of vernal pools currently supporting San Diego fairy shrimp, as well as areas that historically supported vernal pools and are still capable of supporting this species. All of these areas may not currently contain all of the primary constituent elements, but could develop them in the future.

Methods

In determining areas that are essential to conserve the San Diego fairy shrimp, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the Recovery Plan, regional Geographic Information System (GIS) vegetation and species coverages (including vegetation layers for Orange and San Diego Counties), data collected on the U.S. Marine Corps Air Station Miramar (Miramar) and U.S. Marine Corps Station Camp Pendleton (Camp Pendleton), and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act, and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available. We consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding and reproduction; and habitats that are protected from disturbance or are representative of the historic and ecological distributions of a species.

The primary constituent elements for the San Diego fairy shrimp are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal; or the capacity to develop those habitat components. The primary constituent elements are found in those areas that support or have the potential to support vernal pools or other ephemeral depressional wetlands. Primary constituent elements include the vernal pool basins and associated watersheds, and include, but are not limited to: Small to large vernal pools with shallow to moderate depths that hold water for at least 5 days but not necessarily every year; entire watershed(s) and hydrology for vernal pool basins and their related vernal pool complexes; ephemeral depressional wetlands, flat or gently sloping topography, and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat. Primary constituent elements or components thereof are found in all the areas proposed for critical habitat.

Criteria Used To Identify Critical Habitat

In an effort to map areas essential to the conservation of the species, we used data on known San Diego fairy shrimp locations, and those vernal pools and vernal pool complexes that were identified in the Recovery Plan as essential for the stabilization and reclassification of the species. We then evaluated those areas based on the hydrology, watershed and topographic features. Based on this evaluation, a 1-km (.62 mi) Universal Transverse Mercator (UTM) grid was overlaid on top of those vernal pool complexes and their associated watersheds. This 1-km (.62 mi) UTM grid provides a buffer area around either individual vernal pool basins or vernal pool complexes, and provides additional assurances that watersheds and hydrology are captured and maintained for this species. In those cases where occupied vernal pools were not identified in the Recovery Plan, we relied on recent scientific data to update the map coverage.

We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for San Diego fairy shrimp conservation. Within the delineated critical habitat unit boundaries, only lands containing or that could develop the primary constituent elements described above are proposed for critical

habitat. Within this area proposed as critical habitat, only an estimated 18 ha (45 ac) is of unknown occupancy. The remaining areas of vernal pools within the total designated critical habitat area are occupied by San Diego fairy shrimp.

We also considered the existing status of lands in designating areas as critical habitat. Section 10(a) of the Act authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by a Habitat Conservation Plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. NonFederal lands that are covered by an existing operative HCP and executed implementation agreement for San Diego fairy shrimp under Section 10(a)(1)(B) of the Act receive special management and protection under the terms of the HCP/IA and are therefore not being proposed for inclusion in critical habitat.

We expect that critical habitat may be used as a tool to help identify areas within the range of the San Diego fairy shrimp that are most critical for the conservation of the species. We encourage the development of HCPs for such areas on non-Federal lands. We consider HCPs to be one of the most important methods through which non-Federal landowners can resolve endangered species conflicts. We provide technical assistance and work closely with applicants throughout development of HCPs to help identify special management considerations for listed species. We intend that HCPs provide a package of protection and management measures sufficient to address the conservation needs of the species.

Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat by county and land ownership is shown in Table 1. Proposed critical habitat includes San Diego fairy shrimp habitat throughout the species' range in the United States (*i.e.*, Orange and San Diego Counties, California). Lands proposed are under private, State, and Federal ownership, with Federal lands including lands managed by the U.S. Department of Defense (DOD) and the Service. Lands proposed as critical habitat have been divided into six Critical Habitat Units. A brief description of each unit, and reasons for proposing it as critical habitat, are presented below. The units are generally based on geographical location of the vernal pools, soil types, and local variation of topographic position (*i.e.*, coastal mesas, inland valley).

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

[Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within]

County	Federal land *	Local/State land	Private land	Total **
Orange	N/A	100 ha (247 ac)	N/A	100 ha (247 ac)
San Diego	9,234 ha (22,817 ac)	267 ha (660 ac)	5,171 ha (12,778 ac)	14,671 ha (36,254 ac)
Total	9,234 ha (22,817 ac)	367 ha (907 ac)	5,171 ha (12,778 ac)	14,771 ha (36,501 ac)

* Includes Department of Defense and Fish and Wildlife Service lands.

** Includes an estimated 18 ha (45 ac) of unknown occupancy. The remaining areas of vernal pools within the total designated critical habitat area are known to be occupied by San Diego fairy shrimp.

Unit 1: Orange County (Fairview Regional Park) Critical Habitat Unit

Unit 1 encompasses approximately 100 ha (247 ac) within the Los Angeles Basin-Orange Management Area as outlined in the Recovery Plan. The Fairview Regional Park vernal pool complex is proposed as critical habitat. This unit provides the northern extent of this species' distribution and represents the historic distribution of coastal terrace vernal pools in this area. Proposed critical habitat units are based on UTM coordinates.

Unit 2: San Diego: North Coastal Mesa Critical Habitat Unit

Unit 2 encompasses approximately 5,572 ha (13,768 ac) within the San Diego: North Coastal Mesa Management Area as outlined in the Recovery Plan on Camp Pendleton and within the City of Carlsbad. Areas proposed on Camp Pendleton include (1) five training areas, (2) habitat found elsewhere on the base, and (3) lands leased by the California State Department of Parks and Recreation and private interests from Camp Pendleton. Camp Pendleton has several substantial vernal pool complexes that support the San Diego fairy shrimp. Within the jurisdiction of the City of Carlsbad, one vernal pool complex located in the vicinity of Palomar Airport and one complex at Poinsettia Lane train station are being proposed as critical habitat.

These vernal pool complexes represent vernal pool habitat associated with coastal terraces found north of the San Dieguito River. Proposed critical habitat units are based on UTM coordinates.

Unit 3: San Diego: Inland Valley Critical Habitat Unit

Unit 3 encompasses 2,600 ha (6,425 ac) within the San Diego: Inland Valley Management Area as outlined in the Recovery Plan. Lands proposed contain vernal pool complexes within the jurisdiction of the City of San Marcos and the community of Ramona. In the community of Ramona, one of the complexes is within the County's Ramona Airport boundaries. These vernal pool complexes are generally isolated to a degree from maritime influence (greater than 10 km (6 mi) from the coast) and are representative of vernal pools associated with alluvial or volcanic type soils. Proposed critical habitat units are based on UTM coordinates.

Unit 4: San Diego: Central Coastal Mesa Critical Habitat Unit

Unit 4 encompasses 7,500 ha (18,531 ac) within the San Diego: Central Coastal Mesa Management Area as outlined in the Recovery Plan. Lands proposed contain vernal pool complexes within the jurisdiction of the City of San Diego, Miramar, U.S. Department of Defense, State of California, Service, and private interests. These vernal pool complexes are associated with coastal terraces and mesas found south of the

San Dieguito River to the San Diego Bay. Proposed critical habitat units are based on UTM coordinates.

Unit 5: San Diego: Southern Coastal Mesa Critical Habitat Unit

Unit 5 encompasses 2,967 ha (7,332 ac) within the San Diego: Southern Coastal Mesa Management Area as outlined in the Recovery Plan. Lands proposed include vernal pool complexes within the jurisdiction of the Service, City of San Diego, City of Chula Vista, County of San Diego, U.S. Immigration and Naturalization Service (INS), and private interests. These vernal pool complexes are associated with coastal mesas from the Sweetwater River south to the International Border. Proposed critical habitat units are based on UTM coordinates.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

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

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

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. 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. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the San Diego fairy shrimp or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.,* Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

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

(1) Any activity that results in discharge of dredged or fill material, excavation, or mechanized land clearing of ephemeral and/or vernal pool basins;

(2) Any activity that alters the watershed, water quality or quantity to an extent that water quality becomes unsuitable to support San Diego fairy shrimp, or any activity that significantly affects the natural hydrologic function of the vernal pool system; and

(3) Activities that could lead to the introduction of exotic species into occupied or potentially occupied San Diego fairy shrimp habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the

value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. Designation of critical habitat in areas occupied by the San Diego fairy shrimp is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. Designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not. If occupied habitat becomes unoccupied in the future, there is a potential benefit to critical habitat in such cases.

Designation of critical habitat could affect Federal agency activities. Federal agencies already consult with the Service on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(3) Regulation of airport improvement activities by the Federal Aviation Administration;

(4) Military training and maneuvers on Camp Pendleton and Miramar, and other applicable DOD lands;

(5) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the INS;

(6) Licensing of construction of communication sites by the Federal Communications Commission, and;

(7) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

Relationship To Habitat Conservation Plans

A number of habitat planning efforts have been completed within the range of the San Diego fairy shrimp. Principal among these is the NCCP effort in San Diego County. The MSCP, and its subarea plans, provide conservation measures for the San Diego fairy shrimp even though take authorization, should any be needed, is designed to come from a subsequent permitting process (typically through a Section 7 consultation with the Corps of Engineers). The MSCP will result in the total avoidance the great majority of all fairy shrimp habitat within the MHPA planning area. The MSCP provides that the remaining fairy shrimp habitat should be completely avoided to the maximum extent practicable. Unavoidable impacts to this remaining area of habitat is to be minimized and mitigated to achieve no net loss of wetland function and value and to provide additional protective measures, including adaptive management, contained in the MSCP. Because the fairy shrimp habitat preserved in the MHPA planning area is managed for the benefit of the fairy shrimp under the terms of the MSCP, there are no ''additional management considerations or protections'' required for those lands. Therefore, we have determined that non-Federal lands within approved HCP planning areas for the San Diego fairy shrimp do not meet the definition of critical habitat in the Act, and we are not proposing designation of such lands as critical habitat.

The NCCP/HCP effort in Orange County Central/Coastal is designed to provide the same level of protection for San Diego fairy shrimp as the San Diego MSCP. However, unlike the San Diego MSCP, the vernal pool complex within Orange County occurs within a city which is not a participating jurisdiction under the plan. We have therefore determined that this vernal pool complex (Fairview Regional Park complex) is not receiving special management consideration or protection and that it meets the definition of critical habitat and should be designated as such.

Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the San Diego fairy shrimp, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the fairy shrimp. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (*e.g.*, counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We provide technical assistance and work closely with applicants throughout the development of HCPs to identify appropriate conservation management and lands essential for the long-term conservation of the San Diego fairy shrimp. Several HCP efforts are now under way for listed and non-listed species in areas within the range of the San Diego fairy shrimp in areas we propose as critical habitat. These HCPs, coupled with appropriate adaptive management, should provide for the conservation of the species. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the San Diego fairy shrimp should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

Relationship to Mexico

We are not aware of any existing regulatory mechanism in Mexico that would protect the San Diego fairy shrimp or its habitat. Although Mexico has laws that could provide protection for rare species, they are not easily enforced. At this time, Mexico enforces no specific protections for this species, or the vernal pools on which it depends. If specific protections were available and enforceable in Mexico, the portion of the range in Mexico alone, in isolation, would not be adequate to ensure the long-term conservation of this species.

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

(telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of San Diego fairy shrimp habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and,

(5) Economic and other values associated with designating critical habitat for the San Diego fairy shrimp, such as 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).

In this proposed rule, we do not propose to designate critical habitat on nonFederal lands within the boundaries of an existing approved HCP and subarea plan with an executed IA for San Diego fairy shrimp approved under section 10(a)(1)(B) of the Act because the existing HCP provides for long-term commitments to conserve the species and areas essential to the conservation of the gnatcatcher. Therefore, we believe that such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat;

(2) Designate reserves, preserves, and other conservation lands identified by approved HCPs, on the premise that they encompass areas that are essential to conservation of the species within the HCP area and that will continue to require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for the San Diego fairy shrimp is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for the San Diego fairy shrimp in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

Additionally, we are also seeking comments on critical habitat designation relative to future HCPs. Several conservation planning efforts are now under way within the range of the San Diego fairy shrimp, and other listed and nonlisted species, in areas we are proposing as critical habitat. For areas where HCPs are currently under development, we are proposing to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection. We invite comments on the appropriateness of this approach.

In addition, we invite comments on the following or other approaches for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the San Diego fairy shrimp:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the San Diego fairy shrimp, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the

species, and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

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

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The San Diego fairy shrimp was listed as an endangered species in 1997. In fiscal years 1997 through 1999, we conducted 27 formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the fairy shrimp.

Approximately 18 ha (45 ac) of the areas encompassing proposed critical habitat for the San Diego fairy shrimp are currently of unknown occupancy. The remaining areas of vernal pools within the total designated critical habitat area are occupied by San Diego fairy shrimp. Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning ''take'' of the species). Designation of unoccupied areas as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding, but since the potentially unoccupied area (area of unknown occupancy) is only 18 ha (45 ac), we expect little, if any, additional impact from designating this area as critical habitat. Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not. We will evaluate this impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the San Diego fairy shrimp since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in occupied areas of proposed critical habitat. Additional restrictions may be imposed in the area of unknown occupancy proposed as critical habitat; we will evaluate this possibility through our economic analysis under section 4 of the Act. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification

prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat. We expect little additional effect for the potentially unoccupied area of proposed critical habitat, since this area (area of unknown occupancy) is only 18 ha (45 ac). Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not. We will review the effects of this proposed action on Federal agencies or non-Federal persons that receive Federal authorization or funding in the area of unknown occupancy critical habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 2.—IMPACTS OF SAN DIEGO FAIRY SHRIMP LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected[3].	Activities such as those affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act; road construction and maintenance, right-of-way designation, and regulation of agricultural activities; regulation of airport improvement activities under Federal Aviation Administration jurisdiction; military training and maneuvers on Marine Corps Base Camp Pendleton and Marine Corps Air Station, Miramar and other applicable DOD lands; construction of roads and fences along the international border with Mexico and associated immigration enforcement activities by the Immigration and Naturalization Service; construction of communication sites licensed by the Federal Communications Commission, and; activities funded by any Federal agency.	None.
Private or other non-Federal Activities Potentially Affected [4].	Activities such as removing or destroying San Diego fairy shrimp habitat (as defined in the primary constituent elements discussion), whether by mechanical, chemical, or other means (*e.g.,* grading, overgrazing, construction, road building, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, or fragmentation that require a Federal action (permit, authorization, or funding)).	None.

[1] This column represents the activities potentially affected by listing the San Diego fairy shrimp as an endangered species (February 3, 1997; 62 FR 4925) under the Endangered Species Act.
[2] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by Federal, State, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of grazing, mining, and recreation by the Bureau of Land Management or U.S. Forest Service;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Military training and maneuvers on Camp Pendleton, Miramar, and other applicable DOD lands;

(7) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the INS;

(8) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(9) Construction of communication sites licensed by the Federal Communications Commission; and

(10) Activities funded by the U.S. Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities in areas of critical habitat occupied by the species. We expect little additional effect for the potentially unoccupied area of proposed critical habitat, since this area (area of unknown occupancy) is only 18 ha (45 ac). Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not. We will evaluate whether designation of critical habitat in the unknown occupancy area will have an effect on activities carried out by small entities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of

the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species. We expect little additional effect for the potentially unoccupied area of proposed critical habitat, since this area (area of unknown occupancy) is only 18 ha (45 ac). Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq*.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq*.):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied proposed critical habitat. We expect little additional effect for the potentially unoccupied area of proposed critical habitat, since this area (area of unknown occupancy) is only 18 ha (45 ac). Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the San Diego fairy shrimp. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions in areas of occupied critical habitat, we do not anticipate that property values will be affected by the critical habitat designation. We expect little additional effect for the potentially unoccupied area of proposed critical habitat, since this area (area of unknown occupancy) is only 18 ha (45 ac). Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the San Diego fairy shrimp.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California, as well as during the listing process. We will continue to coordinate any future designation of critical habitat for the San Diego fairy shrimp with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the San Diego fairy shrimp imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act, and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the San Diego fairy shrimp.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal

Governments'' (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis. The 1997 Secretarial Order on Native Americans and the Act clearly states that Tribal lands should not be designated unless absolutely necessary for the conservation of the species. According to the Secretarial Order, ''Critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.''

We determined that there are no Tribal lands essential for the conservation of the San Diego fairy shrimp because they do not support populations or suitable habitat. Therefore, we are not proposing to designate critical habitat for the San Diego fairy shrimp on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary authors of this notice are the Carlsbad Fish and Wildlife Office staff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for ''Fairy shrimp, San Diego'' under ''CRUSTACEANS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
CRUSTACEANS							
*	*	*	*	*	*	*	*
Fairy shrimp, San Diego.	*Branchinecta sandiegonensis*.	U.S.A. (CA)	NA	E	608	17.95(h)	NA
*	*	*	*	*	*	*	*

3. In § 17.95 add critical habitat for the San Diego fairy shrimp (*Branchinecta sandiegonensis*) under paragraph (h) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

Sec. 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) Crustaceans

* * * * *

San Diego fairy shrimp (*Branchinecta sandiegonensis*)

1. Critical habitat units are depicted for Orange and San Diego Counties, California, on the maps below.

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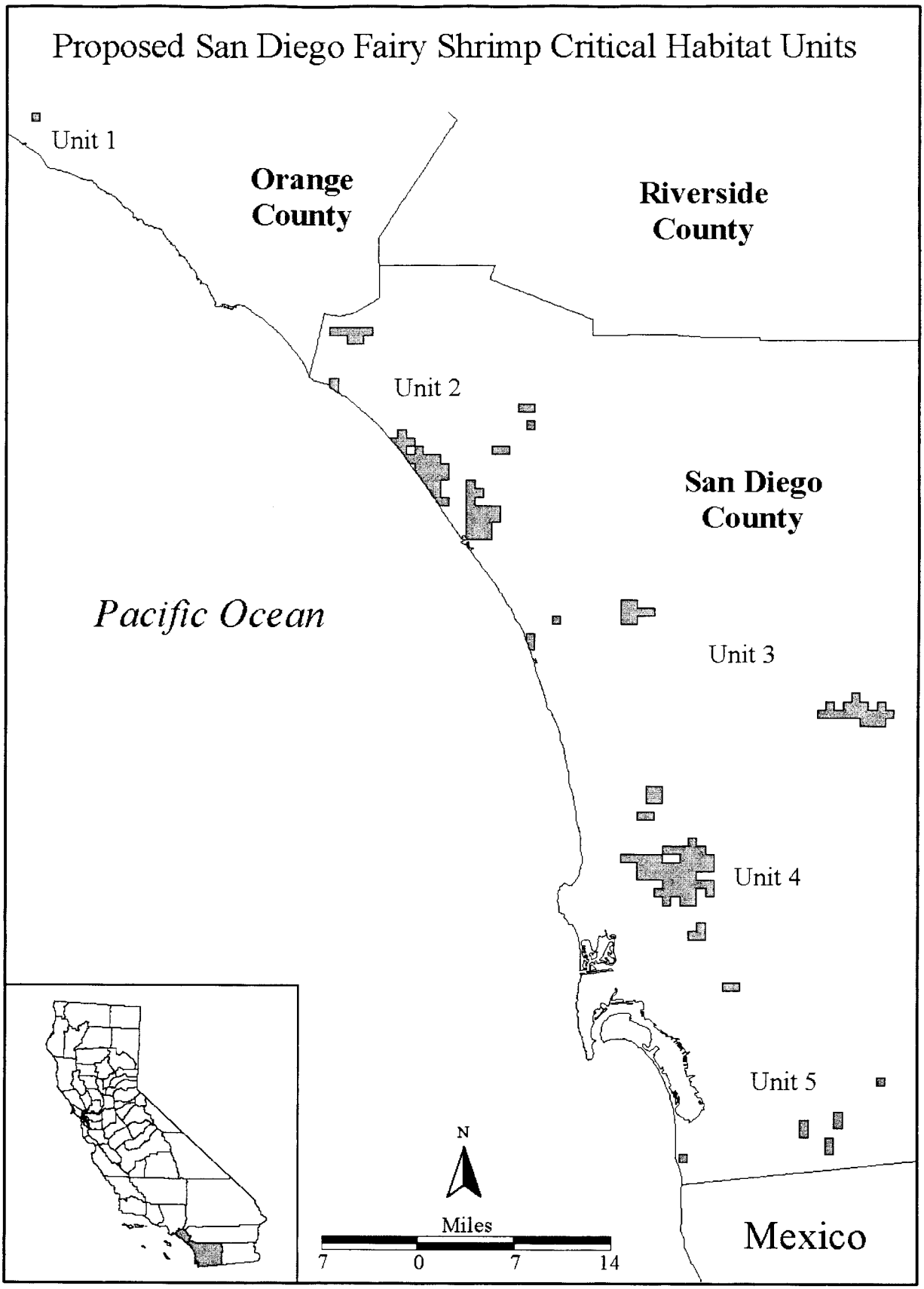

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2. Critical habitat includes vernal pool basins and vernal pool complexes indicated on the maps below and their associated watersheds and hydrologic regime.

3. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements are found in those areas that support or have the potential to support vernal pools or other ephemeral depressional wetlands. Within these seasonal wetlands, specific associations that are essential to the primary biological needs of the San Diego fairy shrimp include, but are not limited to, the following: small to large vernal pools with shallow to moderate depths that hold water for at least 5 days but not necessarily every year; entire watershed(s) and hydrology for vernal pool basins and their associated vernal pool complexes, ephemeral depressional wetlands, flat or gently sloping topography, and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat.

4. Critical habitat does not include nonFederal lands covered by a Habitat Conservation Plan or Subarea Plan, with an executed implementation agreement, approved for the San Diego fairy shrimp under section 10(a)(1)(B) of the Act on or before March 8, 2000.

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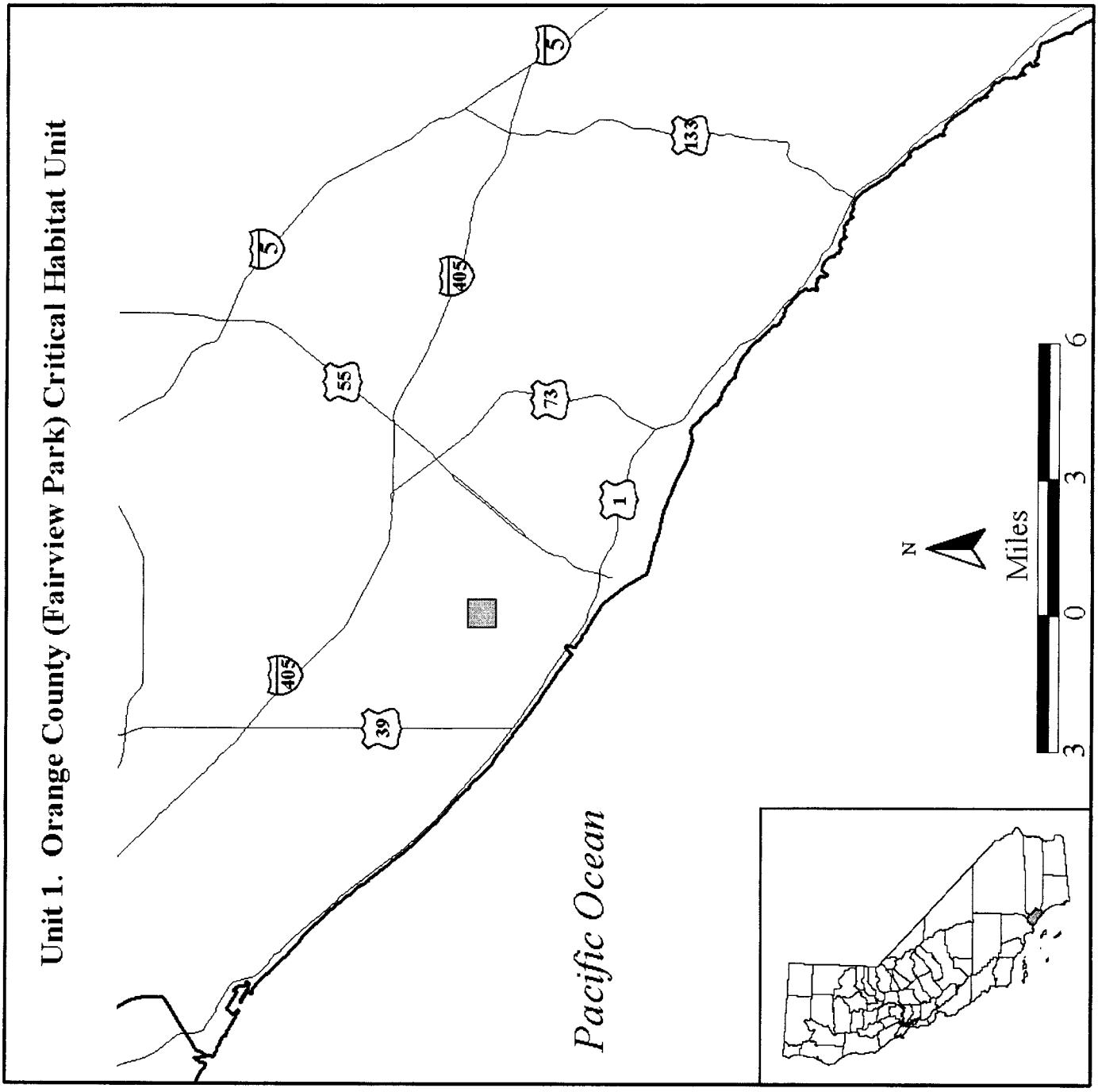

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Map Unit 1; Orange County, California. From USGS 1:24,000 quadrangle map Newport Beach, California (1981). The following lands located in Fairview Regional Park within the City of Costa Mesa are being proposed for critical habitat; starting from UTM coordinate 413000 E, 3725000 N to 413000 E, 3724000 N to 412000 E, 3724000 N to 412000 E, 3725000 N to 413000 E, 3725000 N.

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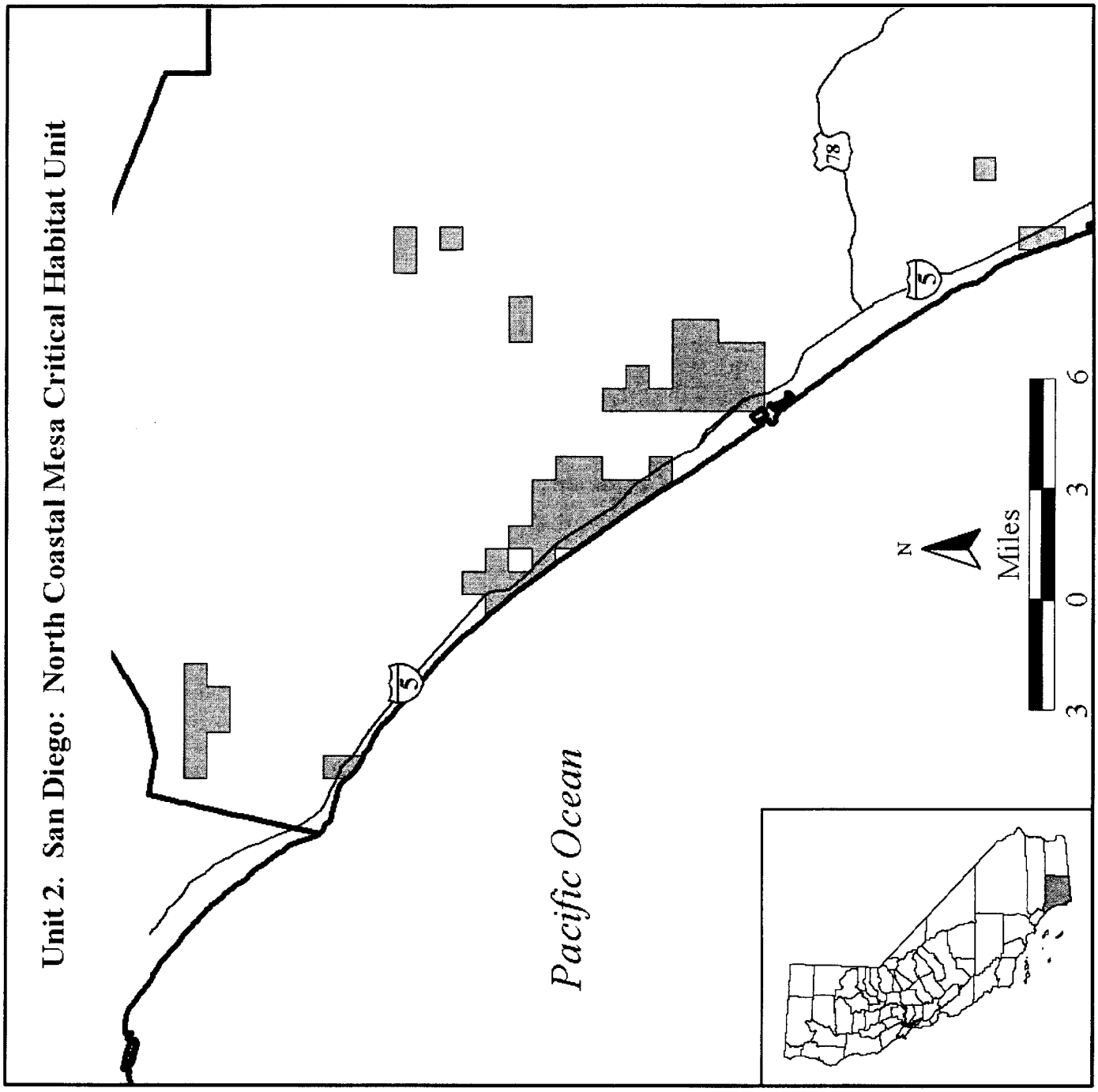

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Map Unit 2; San Diego County, California. From USGS 1:24,000 quadrangle maps Oceanside, California (1975), San Onofre Bluffs, California (1975), Las Pulgas Canyon, California (1968), Morro Hills, California (1968), San Luis Rey, California (1975), Encinitas, California (1975): The following lands within San Clemente, California (1975) quadrangle map starting at UTM coordinate 452000 E, 3700000 N to 452000 E, 3699000 N to 452000 E, 3700000 N to 451000 E, 3698000 N to 449000 E, 3698000 N to 449000 E, 3699000 N to 447000 E, 3699000 N to 447000 E, 3700000 N to 452000 E, 3700000 N. The following lands within San Clemente, California (1975) quadrangle map starting at UTM coordinate 447000 E, 3694000 N to 448000 E, 3694000 N to 448000 E, 3692000 N within San Onofre Bluffs, California (1975) to 447000 E, 3692000 N to 448000 E, 3694000 N to 447000 E, 3694000 N within San Clemente, California (1975) quadrangle map to the Pacific Ocean but not including the Pacific Ocean. The following lands within Morro Hills, California (1968) quadrangle map starting at UTM coordinate 468000 E, 3686000 N to 468000 E, 3685000 N to 466000 E, 3685000 N to 466000 E, 3686000 N to 468000 E, 3686000 N. The following lands within Morro Hills, California (1968) quadrangle map starting at UTM coordinate 471000 E, 3691000 N, to 471000 E, 3690000 N, to 469000 E, 3690000 N, to 469000 E, 3691000 N, to 471000 E, 3691000. The following lands within Morro Hills, California (1968) quadrangle map starting at UTM coordinate 471000 E, 3689000 N, to 471000 E, 3688000 N, to 470000 E, 3688000 N, to 470000 E, 3689000 N, to 471000 E, 3689000. The following lands within Las Pulgas Canyon, California (1968) quadrangle map starting at UTM coordinate 456000 E, 3688000 N, to 456000 E, 3687000 N, to 457000 E, 3687000 N, to 457000 E, 3686000 N, to 458000 E, 3686000 N, to 458000 E, 3685000 N, to 460000 E, 3685000 N, to 460000 E, 3684000 N, to 461000 E, 3684000 N, to 461000 E, 3682000 N, to 460000 E, 3682000 N, to 460000 E, 3680000 N, to 461000 E, 3680000 N, to 461000 E, 3679000 N, to 459000 E, 3679000 N, to 459000 E, 3680000 N, to 458000 E, 3680000 N, to 458000 E, 3681000 N, to 457000 E, 3681000 N, to 457000 E, 3684000 N, to 455000 E, 3684000 N, to 455000 E, 3686000 N, to 454000 E, 3686000 N, to 454000 E, 3687000 N, to 455000 E, 3687000 N, to 455000 E, 3688000 N, to 456000 E, 3688000. Excluding the following: the Las Pulgas Canyon, California (1968) quadrangle map starting at UTM coordinate 456000 E, 3686000 N, to 457000 E, 3686000 N, to 457000 E, 3685000 N, to 456000 E, to 3685000 N, to 456000 E, 3686000 N. The following lands within Las Pulgas Canyon, California (1968) quadrangle map starting at UTM coordinate 464000 E, 3682000 N, to 464000 E, 3681000 N, to 465000 E, 3681000 N, to 465000 E, 3680000 N, to 464000 E, 3680000 N, to 464000 E, 3679000 N, to 467000 E, 3679000 N within the Morro Hills, California (1968) quadrangle map to 467000 E, 3677000 N within the San Luis Rey, California (1975) quadrangle map to 466000 E, 3677000 N, to 466000 E, 3675000 N, to 463000 E, 3675000 N within the Oceanside, California (1975) quadrangle map, to 463000 E, 3682000 N within the Las Pulgas Canyon, California (1968) quadrangle map to 464000 E, 3682000 N. The following lands within San Luis Rey, California (1975) quadrangle map starting at UTM coordinate 473000 E, 3666000 N to 474000 E, 3666000 N to 474000 E, 3665000 N to 473000 E, 3665000 N to 473000 E, 3666000 N. The following lands within Encinitas, California (1975) quadrangle map starting at UTM coordinate 471000 E, 3664000 N to 471000 E, 3662000 N to 470000 E, 3662000 N to 470000 E, 3664000 N to 471000 E, 3664000 N.

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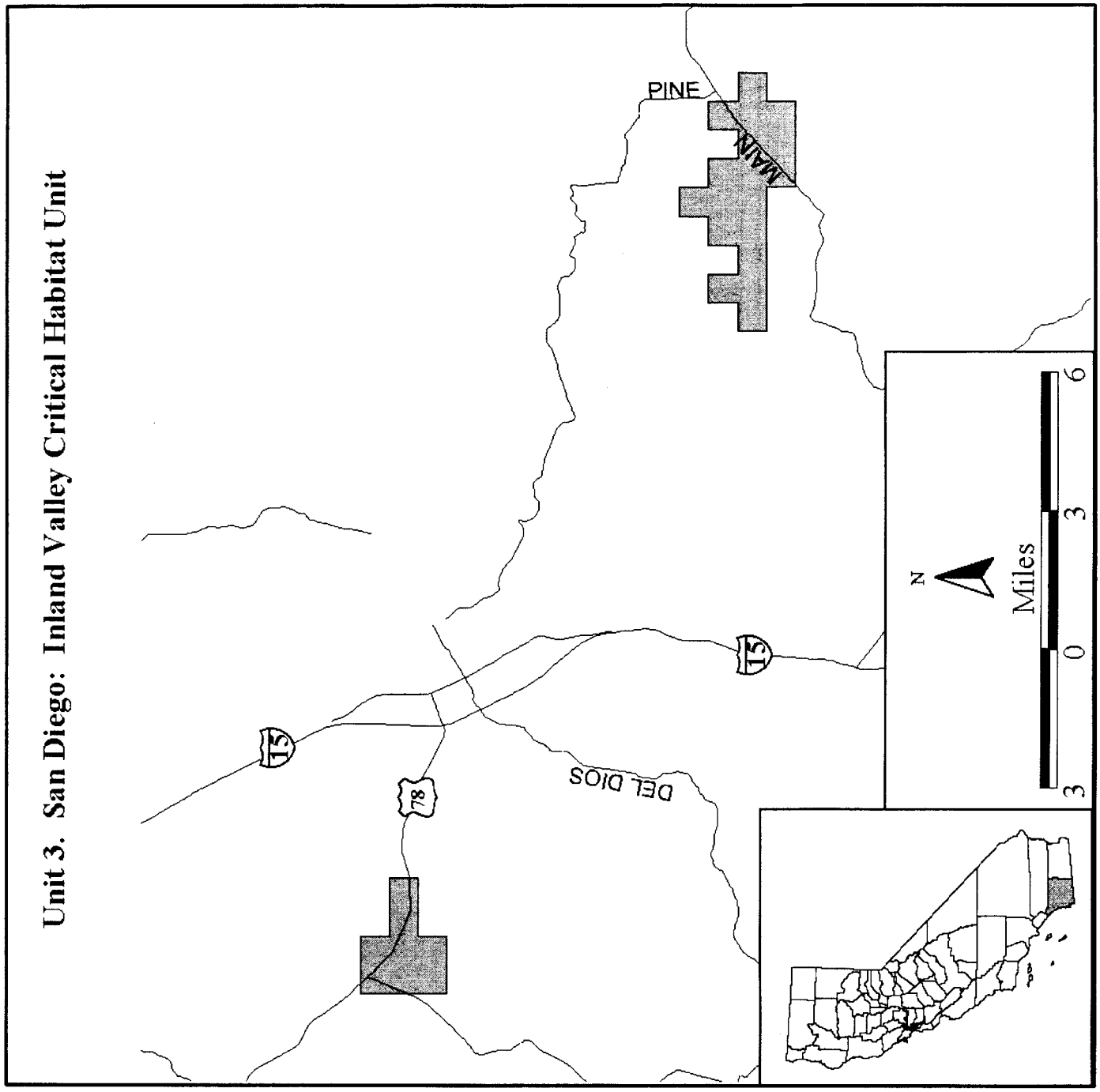

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Map Unit 3; San Diego County, California. From USGS 1:24,000 quadrangle map San Marcos, California (1968), Ramona, California (1975), San Pasqual, California (1971): The following lands within San Marcos, California (1968) quadrangle map starting at UTM coordinate 483000 E, 3668000 N to 483000 E, 3667000 N to 485000 E, 3667000 N to 485000 E, 3666000 N to 483000 E, 3666000 N to 483000 E, 3665000 N to 481000 E, 3665000 N to 481000 E, 3668000 N to 483000 E, 3668000 N. The following lands within San Pasqual, California (1971) quadrangle map starting at UTM coordinate 509000 E, 3657000 N to 509000 E, 3656000 N to 510000 E, 3656000 N to 510000 E, 3655000 N to 511000 E, 3655000 N to 511000 E, 3656000 N to 512000 E, 3656000 N within Ramona, California (1975) quadrangle map to 512000 E, 3655000 N to 513000 E, 3655000 N to 513000 E, 3654000 N to 512000 E, 3654000 N to 512000 E, 3653000 N to 509000 E, 3653000 N within San Pasqual, California (1971) quadrangle map to 509000 E, 3654000 N to 504000 E, 3654000 N to 504000 E, 3655000 N to 505000 E, 3655000 N to 505000 E, 3656000 N to 506000 E, 3656000 N to 506000 E, 3655000 N to 507000 E, 3655000 N to 507000 E, 3656000 N to 508000 E, 3656000 N to 508000 E, 3657000 N to 509000 E, 3657000 N.

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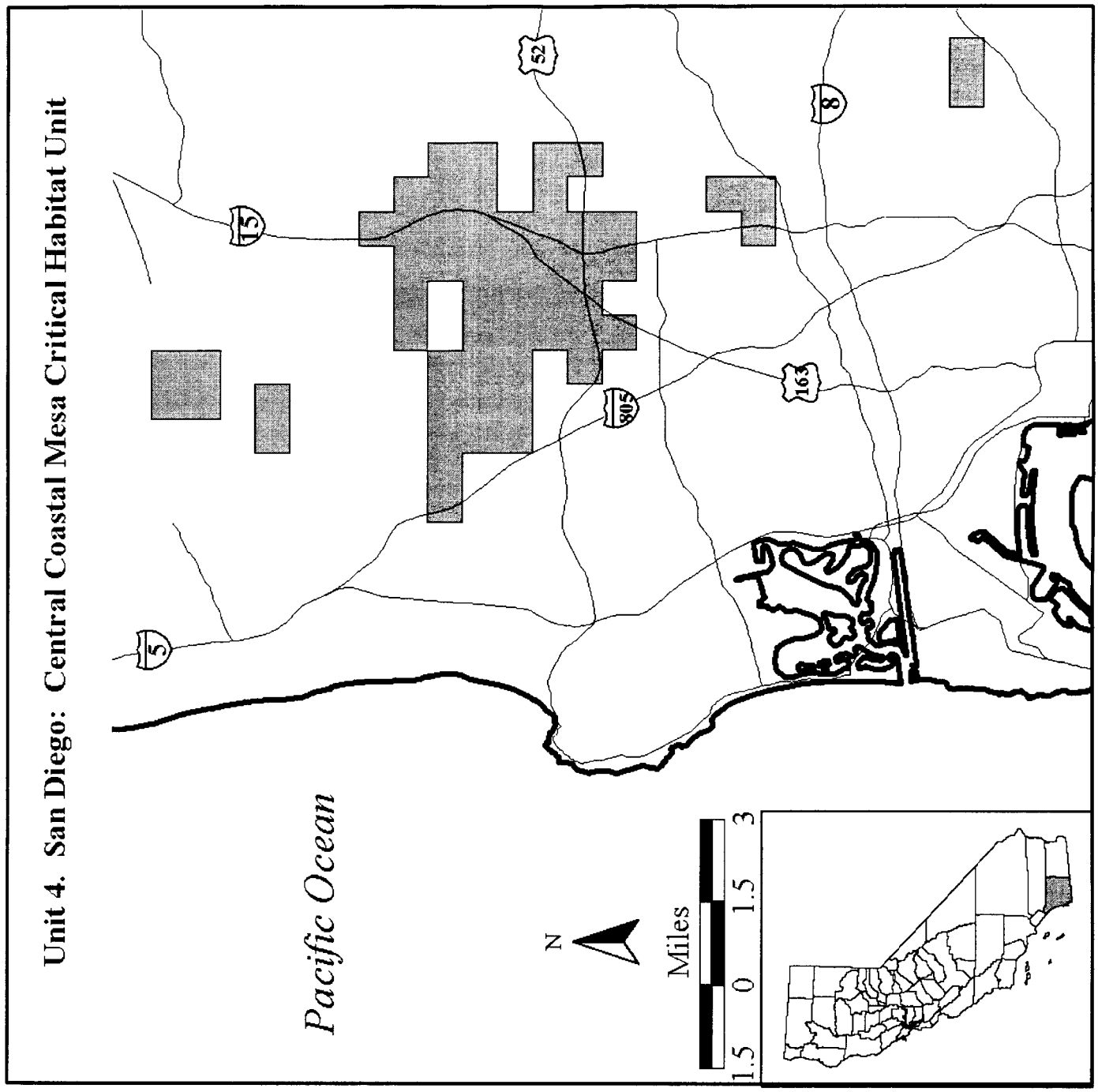

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Map Unit 4; San Diego County, California. From USGS 1:24,000 quadrangle maps Del Mar, California (1975), La Mesa, California (1975), La Jolla, California (1975), Poway, California (1975), National City, California (1975). The following federal and state lands within Del Mar, California (1975) quadrangle map starting at UTM coordinate 484000 E, 3646000 N, to 486000 E, 3646000 N, to 486000 E, 3644000 N, to 484000 E, 3644000 N to 484000 E, 3646000 N. Excluding all lands within the jurisdiction of the City of San Diego and the County of San Diego MSCP. The following federal and state lands within Del Mar, California (1975) quadrangle map starting at UTM coordinate 483000 E, 3643000 N, to 485000 E, 3643000 N, to 485000 E, 3642000 N, to 483000 E, 3642000 N, to 483000 E, 3643000 N. Excluding all lands within the jurisdiction of the City of San Diego and the County of San Diego MSCP. The following federal and state lands within Del Mar, California (1975) quadrangle map starting at UTM coordinate 486000 E, 3638000 N to 486000 E, 3639000 N to 489000 E, 3639000 N within the Poway, California (1975) quadrangle map to 489000 E, 3640000 N to 490000 E, 3640000 N to 490000 E, 3639000 N to 491000 E, 3639000 N to 491000 E, 3638000 N to 492000 E, 3638000 N to 492000 E, 3636000 N within the La Mesa, California (1975) quadrangle map to 490000 E, 3636000 N to 490000 E, 3635000 N to 492000 E, 3635000 N to 492000 E, 3633000 N to 491000 E, 3633000 N to 491000 E, 3634000 N to 490000 E, 3634000 N to 490000 E, 3632000 N to 488000 E, 3632000 N within the La Jolla, California (1975) quadrangle map to 488000 E, 3633000 N to 487000 E, 3633000 N to 487000 E, 3632000 N to 486000 E, 3632000 N to 486000 E, 3633000 N to 485000 E, 3633000 N to 485000 E, 3634000 N to 486000 E, 3634000 N to 486000 E, 3635000 N to 483000 E, 3635000 N to 483000 E, 3637000 N to 481000 E, 3637000 N to 481000 E, 3638000 N within the Del Mar, California (1975) quadrangle map to 486000

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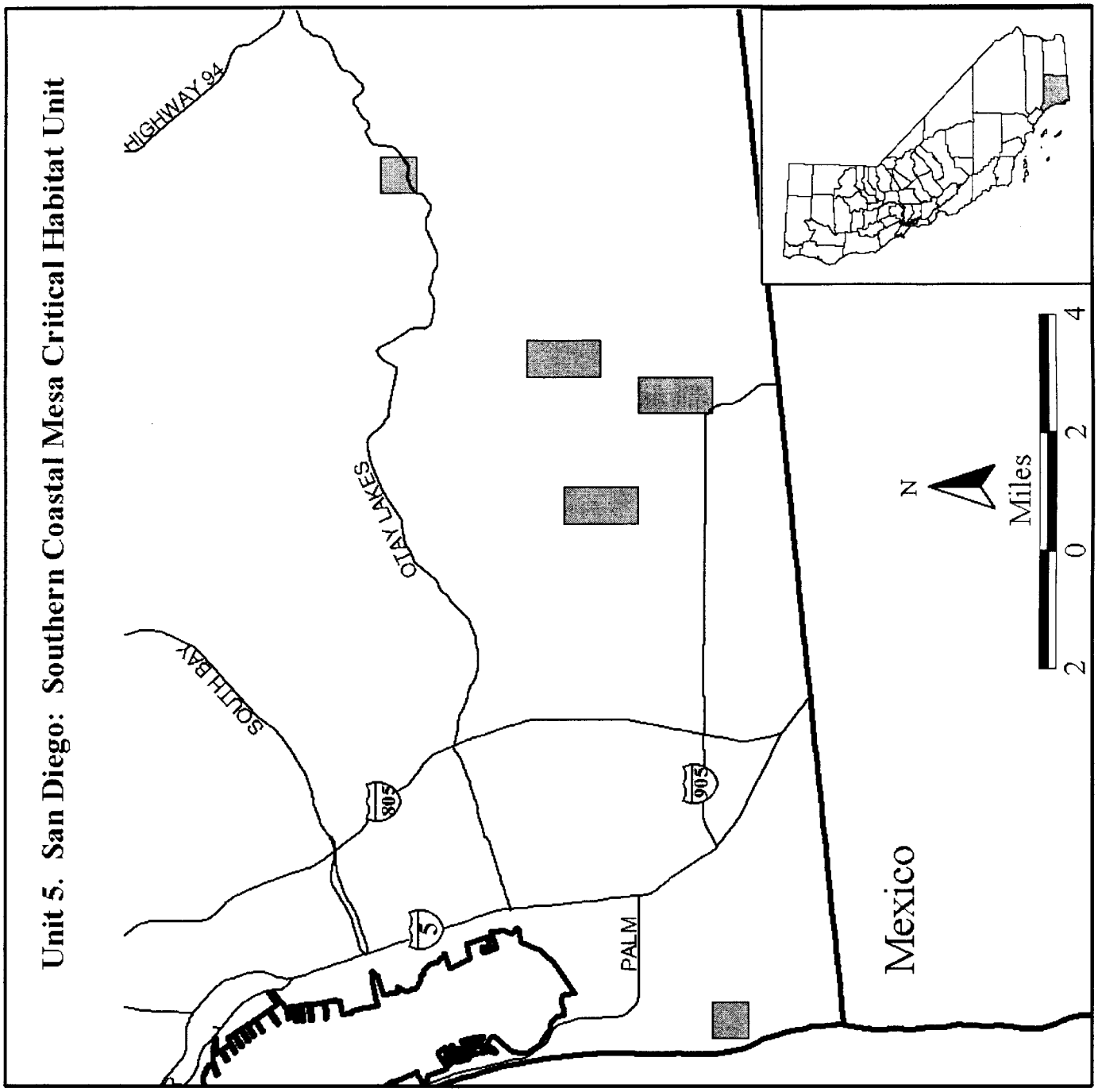

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Map Unit 5; San Diego County, California. From USGS 1:24,000 quadrangle map National City, California (1975), Jamul Mountains, California (1971), Dulzura, California (1988), Otay Mesa, California (1975), Imperial Beach, California (1975): The following federal and state lands within Jamul Mountains, California (1971) quadrangle map starting at UTM coordinate 511000 E, 3612000 N, to 512000 E, 3612000 N within the Dulzura, California (1988) quadrangle map to 512000 E, 3611000 N to 511000 E, 3611000 N within the Jamul

Mountains, California (1971) quadrangle map to 511000 E, 3612000 N. The following federal and state lands within Otay Mesa, California (1975) quadrangle map starting at UTM coordinate 506000 E, 3608000 N to 507000 E, 3608000 N to 507000 E, 3606000 N to 506000 E, 3606000 N to 506000 E, 3608000 N. The following federal and state lands within Otay Mesa, California (1975) quadrangle map starting at UTM coordinate 505000 E, 3605000 N to 506000 E, 3605000 N to 506000 E, 3603000 N to 505000 E, 3603000 N to 505000 E, 3605000 N. The following federal and state lands within Otay Mesa, California (1975) quadrangle map starting at UTM coordinate 502000 E, 3607000 N to 503000 E, 3607000 N to 503000 E, 3605000 N to 502000 E, 3605000 N to 502000 E, 3607000 N. The following federal and state lands within Imperial Beach, California (1975) quadrangle map starting at UTM coordinate 489000 E, 3603000 N to 489000 E, 3602000 N to 488000 E, 3602000 N to 488000 E, 3603000 N to 489000 E, 3603000 N.

Dated: February 29, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–5413 Filed 3–7–00; 8:45 am]

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Notices

Federal Register

Vol. 65, No. 46

Wednesday, March 8, 2000

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

Southwestern Region; Authorization of Livestock Grazing Activities on the Sacramento Grazing Allotment, Sacramento Ranger District, Lincoln National Forest, Otero County, NM

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to authorize livestock grazing activities on the Sacramento Grazing Allotment. The project area encompasses over 111,000 acres of National Forest lands on the Sacramento Ranger District of the Lincoln National Forest. The Sacramento Grazing Allotment comprises approximately 25% of the range district. The project has generated controversy on three main points; effects to threatened and endangered animal and plant species, concern for degraded riparian areas, and forage competition between wildlife and livestock.

The Notice of Intent to prepare an Environmental Impact Statement was first published in the **Federal Register** on Friday, May 5, 1999 (Volume 64, Number 86, pages 24132–24134). The Notice announced that a draft environmental impact statement would be available for review in July 1999, and a final environmental impact statement would be for review in September 1999. The draft environmental impact statement is now expected to be in July 2000 and a final environmental impact statement should be by October 2000.

FOR FURTHER INFORMATION CONTACT: Rick Newmon or Mark Cadwallader, Lincoln National Forest, Sacramento Ranger District, P.O. Box 288, Cloudcroft, New Mexico, 88317, (505) 682–2551.

Dated: February 4, 2000.

Jose M. Martinez,

Forest Supervisor, Lincoln National Forest.

[FR Doc. 00–5532 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Partial Recission of Antidumping Duty Administrative Reviews

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

ACTION: Notice of preliminary results and partial recission of antidumping duty administrative reviews of heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China.

SUMMARY: The Department of Commerce (''the Department'') has preliminarily determined that sales by the respondents in these reviews covering the period February 1, 1998 through January 31, 1999, have been made below normal value (''NV''). If these preliminary results are adopted in our final results of reviews, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Paul Stolz, Antidumping/Countervailing Duty Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3601 or (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, all references to the Department's regulations are to 19 CFR Part 351 (April 1999).

Period of Review

The period of review (''POR'') is February 1, 1998 through January 31, 1999.

Background

On February 19, 1991, the Department published in the **Federal Register** (56 FR 6622) the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles (''certain heavy forged hand tools'' or ''HFHTs''), from the People's Republic of China (''PRC''). On February 11, 1999, the Department published in the **Federal Register** (64 FR 6878) a notice of opportunity to request administrative reviews of these antidumping duty orders. On February 25, 1999, four exporters of the subject merchandise requested that the Department conduct administrative reviews of their exports of the subject merchandise. Specifically, Fujian Machinery & Equipment Import & Export Corporation (''FMEC'') requested that the Department conduct administrative reviews of its exports of HFHTs within the following classes or kinds or merchandise identified in the scope: Axes/adzes; hammers/sledges; and picks/mattocks. Shandong Huarong General Group Corporation (''Shandong Huarong'') requested that the Department conduct an administrative review of its exports of HFHTs within the bars/wedges class or kind of merchandise. Liaoning Machinery Import & Export Corporation (''LMC'') requested that the Department conduct administrative reviews of its exports of HFHTs within the bars/wedges, hammers/sledges, and picks/mattocks classes or kinds of merchandise. Shandong Machinery Import & Export Corporation (''SMC'') requested that the Department conduct administrative reviews of its exports of HFHTs within the axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks classes or kinds or merchandise.

In addition, on March 1, 1999, the petitioner, O. Ames Co., requested that the Department conduct administrative reviews of exports within all four classes of subject merchandise by Tianjin Machinery Import & Export Corporation (''TMC''), FMEC, Shandong

Huarong, LMC, and SMC. The Department initiated these reviews on March 19, 1999 (64 FR 14860 (March 29, 1999)).

On October 28, 1999, the Department extended the time limits for completing the preliminary results in these proceedings until February 28, 2000 (*see* 64 FR 58034 (October 28, 1999)). The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Partial Rescission

In its May 28, 1999, Section A questionnaire response, Shandong Huarong stated that during the POR, it sold only subject merchandise within the bars/wedges and axes/adzes classes or kinds of merchandise. Moreover, Shandong Huarong stated that it produced only bars and did not have access to the information necessary for it to participate in the review of its sales of HFHTs within the axes/adzes class or kind of merchandise. Furthermore, Shandong Huarong requested that it be excluded from the review of the hammers/sledges and picks/mattocks classes or kinds of merchandise. Based on our review of U.S. import data obtained from the U.S. Customs Service (''Customs Service''), we are preliminarily rescinding our review of Shandong Huarong with respect to sales within the hammers/sledges and picks/mattocks classes or kinds of merchandise. As noted below, we have relied upon adverse facts available in determining the preliminary margin for Shandong Huarong's sales of HFHTs within the axes/adzes class or kind of merchandise. For details regarding our decision to resort to adverse facts available see the *Adverse Facts Available* section of this notice below.

In its May 28, 1999, Section A questionnaire response, LMC noted that it sold only HFHTs within the bars/wedges class or kind of merchandise. Based upon our review of U.S. import data obtained from the Customs Service, we are preliminarily rescinding our review of LMC with respect to sales within the axes/adzes, hammers/sledges and picks/mattocks classes or kinds of merchandise.

Scope of Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders is dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by the trading companies SMC and TMC, as well as the information provided by their suppliers (the manufacturers of the subject merchandise). We used standard verification procedures including; on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the memoranda dated February 28, 2000, the public versions of which are on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU-Public File).

Adverse Facts Available

In accordance with section 776(a)(2) of the Act, the Department has determined that the use of adverse facts available is appropriate for purposes of determining the preliminary antidumping duty margins for one or more classes or kinds of subject merchandise sold by SMC, FMEC and Shandong Huarong. Section 776(a)(2) of the Act provides that;

> If an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Moreover, section 776(b) of the Act provides that;

> If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.

In the instant review, SMC, FMEC and Shandong Huarong failed to provide certain information that was requested by the Department. In addition, the information that SMC provided regarding its sales of hammers/sledges could not be verified. For the reasons set forth in the following sections, we have determined that these failures warrant the use of adverse facts available.

SMC

Failure To Provide Requested Information

Pursuant to requests for review by SMC and the petitioner, the Department requested that SMC provide sales and factors of production information regarding its sales of axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks. In its section A questionnaire response, SMC reported quantity and value information for hammers/sledges, axes/adzes, and bars/wedges while making no mention of picks/mattocks. However, in its section C questionnaire response, SMC reported only sales of hammers/sledges. Moreover, in its December 13, 1999 supplemental questionnaire response, SMC stated that it was not supplying financial statements for one of its suppliers because that supplier produced bars, but SMC was ''only participating in the review on hammers.'' On December 28, 1999, SMC submitted additional information which included a chart identifying the quantity and value of its U.S. sales of bars/wedges and axes/adzes. The company did not provide any explanation as to why it included sales of these classes or kinds of merchandise in the chart. At the

verification of SMC, the Department's verifiers found that, during the POR, SMC had, in fact, sold HFHTs to the United States within the axes/adzes, bars/wedges, and picks/mattocks classes or kinds of merchandise, but failed to report these sales to the Department. Company officials told the verifiers that they were aware that these sales had not been reported and that the Department would resort to facts available in determining the margin for such sales. *See* the memorandum to The File, *Verification of Shandong Machinery Import & Export Corporation's Sales Questionnaire Responses*, dated February 28, 2000 (''*SMC Sales Verification Report*'').

We issued to SMC a supplemental questionnaire notifying SMC of the deficiencies in its submissions and providing it with an opportunity to remedy these deficiencies. *See* the letter to SMC dated November 19, 1999, transmitting the supplemental questionnaire. SMC failed to correct these deficiencies. After reviewing the record in this review, we have determined that the information submitted by SMC regarding axes/adzes and bars/wedges is so incomplete as to be unusable for calculating a margin. Accordingly, notwithstanding section 782(e) of the Act, as described below, pursuant to 776(a) of the Act, we are using the facts available to determine SMC's margins with respect to axes/adzes and bars/wedges. Furthermore, SMC's failure to report its sales of picks/mattocks warrants the use of facts available.

Verification Failure

On January 17, 18, 19, and 22, 2000, the Department conducted a verification of SMC's questionnaire response at the company's headquarters in Qingdao, China. At the verification, the Department's verifiers required SMC to reconcile the total reported quantity and value of its U.S. sales to its financial records and to demonstrate the completeness of its reported U.S. sales. The Department notified SMC of these requirements in its verification agenda dated January 7, 2000. In that agenda, the Department requested that SMC prepare specific worksheets and have available certain records which the verifiers intended to use in order to ensure that SMC properly reported all of its U.S. sales of subject merchandise. *See* the Department's letter to TMC and SMC, dated January 7, 2000, transmitting the verification outline. However, prior to the start of the verification, SMC failed to prepare any of the material requested by the Department. Moreover, other than providing source documents, such as invoices, prior to the commencement of the verification, company officials had not prepared any other supporting documentation to demonstrate how the total reported quantity and value of sales reconciled to the company's records. Nevertheless, during the verification, the verifiers afforded SMC officials an opportunity to prepare worksheets reconciling the total reported quantity and value of the company's U.S. sales of hammers/sledges to its financial records [1]. However, the verifiers' efforts to work with company officials were seriously impaired for the following reasons: (1) They discovered that company accountants made unorthodox accounting entries that made it difficult to tie sales invoices to the monthly sales journal (for a detailed discussion of this topic, *see* the proprietary version of the *SMC Sales Verification Report*); (2) they found that for some U.S. sales, SMC had misreported the date of sale; and (3) at the verification, SMC failed to provide certain documentation requested by the verifiers. The verifiers' efforts to work with company officials and the difficulties that they encountered are detailed below.

After discussions with company officials, the verifiers requested that the officials create three charts in order to reconcile total quantity and value: (1) a chart reconciling the sales revenue shown on the financial statements to the cumulative sales revenue listed for all of SMC's departments; (2) a chart listing the total sales revenue, by product, for the Hardware and Tools Department No. 2 (''HTD2''); and (3) a chart listing sales of both subject and non-subject hammers by HTD2 (the third chart was based on information from SMC's sales journal). However, the charts that company officials provided in response to this request failed to reconcile the total reported quantity and value of SMC's U.S. sales to its records. Company officials explained that the accountants routinely made certain monthly adjustments (the nature of which is proprietary) to the sales records of HTD2 which rendered the verifiers' attempts to reconcile total reported quantity and value unworkable (for a detailed discussion of this topic, *see* the proprietary version of the *SMC Sales Verification Report*). Furthermore, because some of these adjustments pertained to extended periods, it was not possible to isolate the portion of the adjustments that pertained solely to the POR; nor could the verifiers tie adjusted sales figures to SMC's questionnaire response. After it became apparent that SMC could not use the prepared charts to reconcile the total reported quantity and value to its financial statements, the verifiers attempted additional procedures to test the completeness and accuracy of SMC's reported U.S. sales using the books and records that were available.

Specifically, the verifiers requested that company officials prepare a chart, similar to the third chart described above, except that it was to be based on SMC's inventory journal for HTD2. After affording company officials with ample time to respond to this request, officials provided a new quantity and value chart and attempted to demonstrate how it could be tied to SMC's reported sales by making certain adjustments. Officials offered no explanation as to why they did not provide the specific chart that the verifiers requested. The attempt to reconcile total reported quantity and value using the new chart was unsuccessful.

Additionally, the attempts to reconcile total reported quantity and value were complicated by the fact that SMC inaccurately reported its date of sale methodology. In its questionnaire responses, SMC reported that it used the invoice date as the date of sale. However, at the verification, the verifiers found that SMC had, in fact, used both the invoice and, in some cases, a projected U.S. customs entry date, as the date of sale for reporting purposes.

As a result of the difficulties outlined above, SMC was unable to demonstrate that it properly reported all of its U.S. sales of hammers/sledges. The Department's antidumping analysis is based fundamentally on an evaluation of a respondent's U.S. selling practices. Thus, a complete and accurate reporting of U.S. sales is central to determining accurate dumping margins. Because SMC could not establish the completeness of its reported U.S. sales, we consider SMC to have failed verification.

Use of Adverse Facts Available

As noted above, the record in this review demonstrates that SMC failed to report sales and factors of production information regarding its sales of axes/adzes, bars/wedges, and picks/mattocks and that it provided information regarding its sales of hammers/sledges that could not be verified. Therefore, pursuant to section 776(a)(2)(A) & (D) of the Act, we have relied upon facts available in reaching our preliminary results for SMC. Moreover, the fact that SMC was aware of its sales of HFHTs

[1] SMC reported only U.S. sales of HFHTs within the hammers/sledges class or kind of merchandise.

within the axes/adzes, bars/wedges, and picks/mattocks classes or kinds of subject merchandise and that the Department readily obtained general information regarding the existence of such sales at the verification, supports our determination that SMC did not act to the best of its ability to report sales and factors of production information for such transactions. Furthermore, SMC failed to act to the best of its ability during the course of these reviews by failing to demonstrate the accuracy of its reported U.S. sales of hammers/sledges at the verification. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting facts available margins for SMC. Specifically, we have based SMC's preliminary margin on the highest margin from this or any prior segment of this proceeding. *See Ferro Union* v. *United States* 44 F. Supp. 2 1310 (CIT 1999) (*Ferro Union*).

FMEC

Failure to Provide Requested Information

Pursuant to requests for review by FMEC and the petitioner, the Department requested that FMEC provide sales and factors of production information regarding its sales of axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks. FMEC submitted its responses to section A and to sections C and D of the Department's questionnaire on May 28, 1999, and June 21, 1999, respectively. In order for the Department to adequately analyze FMEC's selling practices and accurately calculate margins for the company, we requested additional information from FMEC in a supplemental questionnaire dated November 19, 1999. FMEC did not submit a response to the Department's supplemental questionnaire. On December 15, 1999, FMEC informed the Department that it would not participate further in these administrative reviews.

After reviewing the record in this review, we have determined that the information submitted by FMEC regarding axes/adzes, bars/wedges, hammers/sledges and picks/mattocks is so incomplete as to be unusable for calculating a margin. Accordingly, notwithstanding section 782(e) of the Act, as described below, pursuant to 776(a) of the Act, we are using the facts available to determine FMEC's margins with respect to all four classes or kinds or merchandise.

Use of Adverse Facts Available

In accordance with section 776(a)(2)(A) of the Act, we have determined that FMEC's failure to respond to the Department's supplemental questionnaire warrants the use of facts available. Moreover, FMEC's failure to make any attempt to respond to the Department's supplemental questionnaire and its intentional withdrawal from this review, supports our determination that FMEC did not act to the best of its ability to comply with requests for information. Therefore, pursuant to section 776(b) of the Act, we preliminarily determine that FMEC is not entitled to a separate rate and will be subject to the PRC country-wide rates, which are based on adverse facts available. For further details, see the *Separate Rates Determination*, and the *Adverse Facts Available and the Country-Wide Rates* sections of this notice below.

Shandong Huarong

Failure to Provide Requested Information

Pursuant to requests for review by Shandong Huarong and the petitioner, the Department requested that Shandong Huarong provide sales and factors of production information regarding its sales of axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks. In its section A questionnaire response, Shandong Huarong stated that although it sold axes within the scope of the antidumping duty order, it ''does not have access to the required information to participate in the review on axes.'' Shandong Huarong never provided the Department with any sales or factors of production information with respect to its sales of axes. Moreover, Shandong Huarong never explained why it did not have access to information regarding axes.

We issued to Shandong Huarong a supplemental questionnaire notifying Shandong Huarong of the deficiencies in its submissions and providing it with an opportunity to remedy these deficiencies. *See* the letter to Shandong Huarong, dated November 19, 1999, transmitting the supplemental questionnaire. Shandong Huarong failed to correct these deficiencies. After reviewing the record in this review, we have determined that the information submitted by Shandong Huarong regarding axes/adzes is so incomplete as to be unusable for calculating a margin. Accordingly, notwithstanding section 782(e) of the Act, as described below, pursuant to 776(a) of the Act, we are using the facts available to determine Shandong Huarong's margins with respect to axes/adzes.

Use of Adverse Facts Available

As noted above, the record in this review shows that Shandong Huarong did not provide sales and factors of production information regarding its sales of axes/adzes. Although Shandong Huarong stated that it did not have access to this information, it never explained why this was the case. Therefore, pursuant to section 776(a)(2)(A) of the Act, we have relied upon facts available in reaching our preliminary results with respect to Shandong Huarong's sales of axes. Moreover, the fact that Shandong Huarong provided no evidence that it ever attempted to obtain from its suppliers any factors of production information regarding axes/adzes, supports our determination that Shandong Huarong did not act to the best of its ability to report information regarding axes/adzes. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting a facts available margin with respect to HFHT sales by Shandong Huarong within the axes/adzes class of kind of merchandise. Specifically, we have based Shandong Huarong's preliminary margin for axes/adzes on the highest margin from this or any prior segment of this proceeding. *See Ferro Union*.

Corroboration

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA) (H.R. Doc. 103–316 (2nd Sess. 1994) states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at *870.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See Grain-Oriented Electrical Steel From Italy; Preliminary Results of*

Antidumping Duty Administrative Review, 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated); *see also Borden Inc.* v. *United States*, 4 F Supp 2d 1221, 1246–48 (CIT 1998) (the Department may not use an uncorroborated petition margin that is high when compared to calculated margins for the period of review). None of these unusual circumstances are present here. Accordingly, for each class or kind of HFHTs for which we have resorted to adverse facts available, we have used the highest margin from this or any prior segment of the proceeding as the margin for these preliminary results because there is no evidence on the record indicating that such margins are not appropriate as adverse facts available.

Separate Rates Determination

To establish whether a company operating in a non-market economy (''NME'') is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under this test, NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. De facto absence of government control over exports is based on four factors: (1) whether each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. *See, Silicon Carbide*, 59 FR at 22587 and *Sparklers,* 56 FR at 20589.

In the final results of the 1997–1998 reviews of HFHTs, the Department granted separate rates to Shandong Huarong, LMC, and TMC. *See Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Recission of Antidumping Duty Administrative Reviews*, 64 FR 43659 (August 11, 1999) (''*Hand Tools*''). While these three companies received separate rates in several previous segments of these proceedings, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of any separate rate the respondent received in the past. *See Manganese Metal From the People's Republic of China, Final Results and Partial Recission of Antidumping Duty Administrative Review*, 63 FR 12441 (March 13, 1998). In the instant reviews, these companies submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in these reviews by Shandong Huarong, LMC, and TMC included government laws and regulations on corporate ownership, business licences, and narrative information regarding the companies' operations and selection of management. This evidence is consistent with the Department's findings in previous reviews and supports a finding that control of companies in the PRC has been decentralized and that the respondent companies' operations are, in fact, autonomous from the PRC government. We therefore preliminarily determine that these companies continue to be entitled to separate rates.

With respect to FMEC, since it terminated its participation in this review and we were not able to verify the information the company submitted, we preliminarily determine that FMEC did not establish its entitlement to a separate rate.

SMC failed verification in the 1997–1998 administrative review and did not establish its entitlement to a separate rate in that review. *See Hand Tools* at 64 FR 43659. Although, as noted above, we were unable to verify SMC's U.S. sales information, in this review we were able to verify SMC's separate rates information. At the verification of SMC, we examined SMC's complete separate rates questionnaire response including provincial government documents regarding SMC's relationship with the PRC government, SMC's export licence, and records regarding SMC's owners, management selection process, price setting practices, disposition of corporate profits, and use of foreign currency receipts. We found no evidence of de facto government control. *See SMC Sales Verification Report.* Thus, based on this finding and record evidence of no de jure government control of export activities, we preliminarily determine that SMC is entitled to a separate rate.

Adverse Facts Available and the Country-Wide Rates

The Department has determined that the use of facts available is appropriate for purposes of establishing the country-wide rate for these preliminary results of reviews, pursuant to section 776(a)(2)(B) of the Act. The Act provides that the administering authority shall use facts otherwise available when an interested party ''fails to provide such information by the deadlines for the submission of the information or in the form and manner requested.'' On April 19, 1999, the Department sent a questionnaire to the Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') in order to collect information relevant to the calculation of the PRC-wide rate. MOFTEC did not respond to our questionnaire.

Section 776(b) of the Act authorizes the Department to use adverse facts available whenever it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Because MOFTEC did not respond to our questionnaire or direct us to send the questionnaire to any other party, and because FMEC

terminated its participation in this review, we determine that the PRC-wide entity did not cooperate to the best of its ability with our requests for information. Because of the failure of MOFTEC to respond to our questionnaire and FMEC's failure to respond fully to our questionnaire, we lack data necessary to calculate a PRC-wide rate. Therefore, pursuant to section 776(b) of the Act, we are relying on adverse facts available to determine the margin for the PRC-wide entity, which includes FMEC. As outlined in section 776(b) of the Act, adverse facts available may include reliance on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review under section 751 of the Act or determination under section 753 of the Act; or (4) any other information placed on the record. When applicable, for each segment of these proceedings we have used as adverse facts available for the PRC-wide rate the highest rate from the current or previous segments of these proceedings. The PRC-wide rates from the most recently completed review are the highest rates from any segment of these proceedings for bars/wedges (47.88 percent) and hammers/sledges (27.71 percent). The calculated rates from these current reviews are the highest rates from any segment of these proceedings for axes/adzes (51.52 percent) and picks/mattocks (138.78 percent). As noted under the *Corroboration* section above, we have determined that these margins are appropriate to use as adverse facts available.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an export price (''EP'') for sales to the United States because the first sale was made before the date of importation and the use of constructed export price was not otherwise warranted. When appropriate, we made deductions from the selling price to unaffiliated parties for ocean freight, marine insurance, foreign brokerage and handling, and foreign inland freight. Each of these services, with one exception, was either provided by a NME vendor or paid for using a NME currency. Thus, we based the deduction for these movement charges on surrogate values (see the discussion regarding companies located in NME countries and the Department's selection of a surrogate country in the *Normal Value* section of this notice). The one exception referred to above concerns TMC and LMC, which reported that a market economy vendor provided ocean freight for a small portion of their U.S. sales and that they paid for this service using a market economy currency. Therefore, for these sales, we used the reported market economy ocean freight expense in calculating EP.

For TMC's and LMC's other sales, and for the other respondents, we valued ocean freight using the official tariff rates published for hand tools by the Federal Maritime Commission. When possible, we used the rates for 20 and 40 foot container shipments between the ports reported in the respondents' Bills of Lading. If port-specific rates were not available, we used the regional rates calculated in the *Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China,* 62 FR 9160 (February 28, 1997) (''*Brake Drums and Brake Rotors*''). In order to use these rates in our calculations, it was necessary to convert the per-container rates into per-metric ton rates by dividing the container rate by 18 metric tons. This conversion factor was used in the two most recently completed reviews of HFHTs. We valued marine insurance using the rate in effect in India which was reported in the public version of the questionnaire response placed on the record in *Stainless Steel Wire Rod From India; Final Results of Administrative Review,* 63 FR 48184 (September 9, 1998) (''*India Wire Rod*''). We valued foreign brokerage and handling using the rate reported in the questionnaire response in *India Wire Rod*. The sources used to value foreign inland freight are identified below in the *Normal Value* section of this notice.

To account for inflation or deflation between the time period that the freight, brokerage, and insurance rates were in effect and the POR, we adjusted the rates using the wholesale price indices (''WPI'') for India as published in the International Monetary Fund's (''IMF'') publication, *International Financial Statistics.* For further discussion of the surrogate values used in these reviews, see *Memorandum From the Team Regarding Surrogate Values Used for the Preliminary Results of the Eighth Administrative Reviews of Certain Heavy Forged Hand Tools From the People's Republic of China,* (February 28, 2000), (''*Surrogate Value Memorandum*''), which is on file in the CRU–Public File.

Normal Value

For exports from NMEs, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production methodology if (1) the subject merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value. Section 351.408 of the Department's regulations sets forth the Department's methodology for calculating the NV of merchandise from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as an NME. Since none of the parties to these proceedings contested such treatment in these reviews, we calculated NV in accordance with section 773(c) of the Act and section 351.408 of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the factors of production (''FOP'') utilized in producing HFHTs [2] include, but are not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the costs of the FOP in a market economy that is (A) at a level of economic development comparable to the PRC, and (B) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product, the growth rate in per capita income, and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. For further discussion of the Department's selection of India as the surrogate country, *see* the *Memorandum From Jeff May, Director, Office of Policy, to Thomas Futtner, Acting Office Director, AD/CVD Enforcement Group II,* dated December 8, 1999, which is on file in the CRU–Public File.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, when possible, we valued FOP using surrogate values that were in effect during the POR. Surrogate values that were in effect during periods other than the POR were adjusted, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices for India that were reported in the IMF's publication, *International Financial Statistics.* We valued the FOP as follows:

(1) We valued direct materials used to produce HFHTs (i.e., steel, steel scrap, paint, and anti-rust oil) and the steel scrap generated from the production of

[2] We adjusted the reported factors based on verification findings, *see* Calculation Memo.

HFHTs using the rupee per metric ton or rupee per kilogram value of imports that entered India during the period February through August 1998 as published in the *Monthly Statistics of the Foreign Trade of India,* Volume II—Imports (''Indian Import Statistics'').

(2) We valued labor using a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's web site (*See* www.ita.doc.gov/import__admin/records/).

(3) We derived ratios for factory overhead, selling, general and administrative (''SG&A'') expenses, and profit using information reported for 1992–1993 in the January 1997 *Reserve Bank of India Bulletin.* From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(4) We valued packing materials, including cartons, pallets, iron straps, anti-damp paper, anti-rust paper, plastic strips, iron knots, plastic bags, iron wire, and metal clips, using the rupee per metric ton or rupee per kilogram value of imports that entered India during the period February through August 1998 as published in *Indian Import Statistics.* We valued hessian cloth (a packing material) using the rupee per kilogram value of imports that entered India during the period April through July 1998 as published in *Indian Import Statistics.*

(5) We valued coal using the price of steam coal in India in 1996 as reported in the International Energy Agency's publication, *Energy Prices and Taxes,* Second Quarter 1999 (''*EPT*'').

(6) We valued electricity using the 1997 Indian electricity prices for industrial use as reported in *EPT.*

(7) We used the following sources to value truck and rail freight services incurred to transport direct materials, packing materials, and coal from the suppliers of the inputs to the factories producing HFHTs:

Truck Freight: If a respondent used its own trucks to transport material or subject merchandise, we valued freight services using the average cost of operating a truck, which we calculated from information published in *The Times of India* on April 24, 1994. If a respondent did not use its own trucks or the respondent did not state that it used its own trucks, we valued freight services using the rates reported in an August 1993 cable from the U.S. Embassy in India to the Department. *See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China,* 58 FR 48833 (September 20, 1993).

Rail Freight: We valued rail freight services using the April, 1995 rates published by the Indian Railway Conference Association. These rates were used in *Brake Drums and Brake Rotors.* For further discussion of the surrogate values used in these reviews, *see Surrogate Value Memorandum,* dated February 28, 2000, which is on file in the CRU-Public File.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist for the period February 1, 1998 through January 31, 1999:

Manufacturer/exporter	Margin (percent)
Shandong Huarong General Group Corporation:	
Axes/Adzes	51.52
Bars/Wedges	27.29
Liaoning Machinery Import & Export Corporation: Bars/Wedges	20.23
Tianjin Machinery Import & Export Corporation:	
Axes/Adzes	51.52
Bars/Wedges	43.99
Hammers/Sledges	26.38
Picks/Mattocks	138.78
Shandong Machinery Import & Export Corporation:	
Axes/Adzes	51.52
Bars/Wedges	47.88
Hammers/Sledges	27.71
Picks/Mattocks	138.78
PRC-wide rates:	
Axes/Adzes	51.52
Bars/Wedges	47.88
Hammers/Sledges	27.71
Picks/Mattocks	138.78

Parties to the proceeding may request disclosure within 10 days of the date of announcement of these preliminary results, in accordance with 19 CFR 351.224. Any interested party may request a hearing within 30 days of publication of this notice, in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice, in accordance with 19 CFR 351.309(c)(1)(ii). Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish a notice of the final results of these administrative reviews, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of these preliminary results.

The final results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise covered by these reviews and for future deposits of estimated duties.

Duty Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we have calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. For those respondents or classes or kinds of merchandise with margins based on facts available, we based the importer-specific assessment rates on the facts available margin percentages. These importer-specific rates will be assessed uniformly on all entries of each importer that were made during the POR. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is de minimis, i.e., less than 0.5 percent. The Department will issue appraisement instructions directly to the Customs Service.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above which have separate rates (Shandong Huarong, LMC, SMC and TMC) will be the rates for those firms established in the final results of these administrative reviews for the classes or kinds of merchandise listed above; (2) for any previously reviewed PRC or non-PRC exporter with a separate rate, the cash deposit rates will be the company-specific rates established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the

final results of these reviews; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5648 Filed 3–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review

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

ACTION: Notice of preliminary results of 1998–1999 administrative review and new shipper review and partial rescission of administrative review of stainless steel bar from India.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India with respect to the following companies: Chandan Steel Ltd., Ferro Alloys Corporation Limited, Isibars Limited, Panchmahal Steel Limited, Sindia Steels Limited, Venus Wire Industries Limited, and Viraj Impoexpo Ltd. In response to a request from Meltroll Engineering Pvt., Ltd., the Department of Commerce is conducting a new shipper review of the antidumping duty order on stainless steel bar from India. These reviews cover sales of stainless steel bar to the United States during the period February 1, 1998, through January 31, 1999.

We have preliminarily determined that, during the period of review, Ferro Alloys Corporation Limited, Isibars Limited, Panchmahal Steel Limited, Sindia Steels Limited, and Viraj Impoexpo Ltd. made sales below normal value and that Chandan Steel Ltd., and Meltroll Engineering Pvt., Ltd., and Venus Wire Industries Limited did not make sales below normal value. If these preliminary results are adopted in our final results of administrative review and new shipper review, we will instruct the Customs Service to assess antidumping duties equal to the difference between the export price and the normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are also requested to submit (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Zak Smith, James Breeden, or Melani Miller, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0189, (202) 482–1174, and (202) 482–0116, respectively.

SUPPLEMENTAL INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, all references to the Department of Commerce's (''the Department's'') regulations are to 19 CFR Part 351 (April 1998).

Background

On February 21, 1995, the Department published in the **Federal Register** (60 FR 9661) the antidumping duty order on stainless steel bar from India. The Department notified interested parties of the opportunity to request an administrative review of this order on February 11, 1999 (64 FR 6878). On February 26, 1999, the Department received requests from the petitioners [1] and five respondents to conduct an administrative review. Thus, in accordance with 19 CFR 351.221(b)(1), we published (64 FR 14860) a notice of initiation of this antidumping duty administrative review on March 29, 1999, with respect to Bhansali Bright Bars Pvt. Ltd. (''Bhansali''), Chandan Steel Ltd. (''Chandan''), Ferro Alloys Corporation Limited (''Facor''), Isibars Limited (''Isibars''), Jyoti Steel Industries (''Jyoti''), Madhya Pradesh Iron & Steel Company (''Madhya Pradesh''), Panchmahal Steel Limited (''Panchmahal''), Parekh Bright Bars Pvt. Ltd. (''Parekh''), Shah Alloys Ltd. (''Shah''), Sindia Steel Limited (''Sindia''), Venus Wire Industries Ltd. (''Venus''), and Viraj Impoexpo Ltd. (''Viraj''). The review covers the period February 1, 1998, through January 31, 1999.

On February 26, 1999, Meltroll Engineering Pvt. Ltd. (''Meltroll'') requested that we conduct a new shipper review. We published the notice of initiation for this new shipper review on April 15, 1999 (64 FR 18601). This new shipper review covers the same period as the administrative review and, pursuant to section 751(a) of the Act and 19 CFR 351.214(j)(3), is being conducted concurrently with the administrative review.

During May and June, 1999, Bhansali, Jyoti, and Shah reported no shipments of the subject merchandise to the United States during the period of review (''POR'') that were not already covered by a previous segment of this proceeding. We independently confirmed with the Customs Service that there were no entries from these companies. Therefore, in accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding the review with respect to these companies. Furthermore, on June 7, 1999, Madhya Pradesh withdrew its request for review. Madhya Pradesh's request was timely and no other interested party requested a review of the company. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the review of Madhya Pradesh.

On August 17, 1999, the Department initiated sales below cost investigations of Isibars and Panchmahal. On January 18, 2000, the Department initiated a sales below cost investigation of Venus. On February 14, 2000, the Department initiated a sales below cost investigation of Sindia. Sales below cost analyses of

[1] Al Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Slater Steels Corp., and Talley Metals Technology, Inc.

Sindia and Venus are not included in this notice because, in the case of Sindia, the investigation was initiated shortly before issuance of these preliminary results and, in the case of Venus, we intend to ask the company to provide further information and clarification with respect to its cost reporting.

Scope of Reviews

Imports covered by these reviews are shipments of stainless steel bar (''SSB''). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.,* cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these reviews is dispositive.

Use of Facts Otherwise Available

Section 776(a) provided that the Department shall apply ''facts otherwise available'' if, *inter alia,* a respondent:

(1) Withholds information that has been requested;

(2) Fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of Section 782;

(3) Significantly impedes a proceeding; or

(4) Provides information that cannot be verified.

Section 782(e) of the Act provides further that the Department shall not decline to consider information that is submitted by an interested party and that is necessary to the determination but does not meet all the applicable requirements established by the Department if-

(1) The information is submitted by the deadline established for its submission;

(2) The information can be verified;

(3) The information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination;

(4) The interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and

(5) The information can be used without undue difficulties.

We have preliminarily determined that the use of facts available in certain circumstances is necessary. The discussion below details the particular circumstances of each company for which we are applying facts available.

Viraj

In its June 3, 1999, submission, Viraj reported that it had no home market sales of the merchandise under review. On August 17, 1999, we sent Viraj a supplemental questionnaire asking it to confirm that it had reported the total value and volume of sales of all merchandise described in Appendix III of the questionnaire in its home market, and to its three largest third country markets during the POR. In its September 23, 1999, submission, Viraj confirmed that it properly reported all sales of the merchandise under review to the United States, the home market, and third country markets. In a January 18, 2000, supplemental questionnaire, we again asked Viraj to clarify whether it was reporting all sales of stainless steel bars in any form in the home market. We also instructed Viraj to update its database and entire response in the event that it did have home market sales.

On February 9, 2000, Viraj responded by submitting a database of previously unreported home market sales made during the POR. On February 14, 2000, Viraj submitted a narrative response corresponding to the February 9th submission. Because the deadline for submitting factual information had passed, we rejected Viraj's February 14th submission on February 17, 2000 (see the Letter to Viraj ''Rejection of Submission,'' which is available in the public records of the Department's Central Records Unit, Room B–099).

Because the home market sales information provided by Viraj through February 9 was incomplete, we have preliminarily determined that Viraj failed to provide information in the manner requested by the Department within our deadline. In particular, lacking a narrative description of the home market sales reported on February 9, we do not believe that the information submitted by Viraj serves as a reliable basis for calculating normal value (''NV''). Therefore, pursuant to section 776(a) of the Act, we must use facts otherwise available.

In determining the appropriate facts available to apply to Viraj, we have preliminarily determined that an adverse inference is warranted because Viraj failed to cooperate by not acting to the best of its ability in complying with a request for information (*see* section 776(b) of the Act). Specifically, as described above, Viraj was requested by the Department to report its home market sales on three separate occasions. Only on the third occasion did Viraj admit to having sales of the foreign like product in the home market, and in making this admission, Viraj failed to provide a comprehensive response for these sales. Viraj has argued that it did not intentionally omit its home market sales because it did not realize that the merchandise in question had to be reported, we note that the original questionnaire includes as Appendix III a full description of the scope of these reviews. Furthermore, we note that if Viraj had any questions as to what merchandise should be reported, our questionnaires are clear in stating that interested parties should contact the Department with such queries. This is not the first review in which Viraj has been involved. Therefore, we preliminarily determine that by not providing necessary information specifically requested by the Department, Viraj failed to cooperate to the best of its ability (for a further discussion see the Memorandum to Richard Moreland dated February 28, 2000, ''Facts Otherwise Available for Viraj Impoexpo Ltd.,'' which is available in the public records of the Department's Central Records Unit, Room B–099). Consequently, we have preliminarily determined that an adverse inference is warranted in selecting facts available.

As adverse facts available, we have assigned a margin of 21.02 percent to Viraj. This margin was calculated for

sales by Mukand Limited during the original less-than-fair-value (''LTFV'') investigation and represents the highest weighted-average margin determined for any firm during any segment of this proceeding. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (''SAA'') provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 103–316, Vol. 1, 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)). In this review, there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, we find that the 21.02 percent rate is corroborated.

Panchmahal

While Panchmahal did respond to our original questionnaire and supplemental questionnaires, it refused our request to revise its variable cost of manufacture data (''VCOM'') or total cost of manufacture data (''TCOM'') relevant to the POR. This information is necessary to calculate the appropriate margins in all instances because Panchmahal does not have comparison market sales of merchandise which is identical to the merchandise it sells in the United States. Furthermore, Panchmahal did not make the revisions we requested with respect to its reporting of constructed value (''CV''). The CV information is necessary to calculate the appropriate margins in those instances where Panchmahal's home market data cannot be used to calculate a dumping margin. Thus, in accordance with section 776(a) of the Act and 19 CFR 351.308(a), we are using facts otherwise available because Panchmahal did not submit information in the manner or form requested by the Department. Moreover, pursuant to section 782(e)(3) of the Act, we find the information on the record so incomplete that it cannot serve as a reliable basis for reaching an appropriate dumping margin for these preliminary results.

In determining the appropriate facts available to apply to Panchmahal, we have preliminarily determined that Panchmahal failed to cooperate by not acting to the best of its ability to comply with a request for information under section 776(b) of the Act. Specifically, on December 13, 1999, we issued a supplemental questionnaire to Panchmahal which instructed the company to recalculate its VCOM and TCOM figures to reflect the differences in labor and overhead costs incurred to produce stainless steel bar of different finish and size. We made the same instruction with respect to Panchamahal's CV information. In its supplemental questionnaire response, Panchmahal demonstrated that it is able to calculate different costs for different size-ranges. However, it elected not to revise its VCOM or TCOM data and, instead, continued to rely on average cost figures for purposes of calculating VCOM and TCOM. With respect to its reporting of CV, Panchmahal did not demonstrate that it incorporated size-specific costs. Therefore, in selecting facts available, we have preliminarily determined that an adverse inference is warranted. As adverse facts available, we have assigned a margin of 21.02 percent to Panchmahal.

As noted above, this margin was calculated for sales by Mukand Limited during the original LTFV investigation and represents the highest weighted-average margin determined for any firm during any segment of this proceeding. It is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, we find that the 21.02 percent rate is corroborated.

Parekh

Parekh did not respond to our May 6, 1999, questionnaire, nor did it indicate that it was experiencing difficulties responding to the questionnaire or meeting the deadline for submission. Therefore, in accordance with section 776(a) of the Act, we must use facts otherwise available because Parekh withheld information requested by the Department.

In determining the appropriate facts available to apply to Parekh, we have preliminarily determined that Parekh failed to cooperate by not acting to the best of its ability to comply with a request for information under section 776(b) of the Act. Specifically, Parekh's failed to communicate in any way with the Department. Therefore, in selecting facts available, we have preliminarily determined that an adverse inference is warranted. As adverse facts available we have assigned a margin of 21.02 percent to Parekh. As noted above, this margin was calculated for sales by Mukand Limited during the original LTFV investigation and represents the highest weighted-average margin determined for any firm during any segment of this proceeding. It is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, we find that the 21.02 percent rate is corroborated.

Chandan

Chandan submitted CV information for those U.S. sales that did not have any contemporaneous home market sales for matching purposes. After reviewing the information that was timely provided by Chandan, we find that the information is incomplete and will require further revisions and clarifications. Specifically, we will be seeking clarification from Chandan with respect to reported further manufacturing and conversion by an unaffiliated party. While we have asked Chandan to provide further information and clarification on this issue, we did not request the information in time for its use in the preliminary results. Moreover, pursuant to section 782(e)(3) of the Act, we find the information on the record so incomplete that it cannot serve as a reliable basis for reaching an appropriate dumping margin for these preliminary results. Therefore, in accordance with section 776(a) of the Act, we are using facts otherwise available.

In determining the appropriate facts available to apply to Chandan, we have preliminarily assigned a margin of 0.00 percent to Chandan's sales of the subject merchandise that do not have a contemporaneous home market sale for matching purposes. This margin is the rate calculated for Chandan's sales that do have contemporaneous matches.

We note that Chandan submitted additional CV information on February 14, 2000. Because we did not request the additional information provided and the deadline for submitting factual information had passed, we rejected Chandan's February 14th submission on February 17, 2000 (see the Letter to Chandan ''Rejection of Submission,'' which is available in the public records of the Department's Central Records Unit, Room B–099).

Normal Value Comparisons

To determine whether sales of stainless steel bar from India to the United States were made at less than NV, we compared export price (''EP'') to the NV, as described in the ''*Export Price*'' and ''*Normal Value*'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated EPs for comparison to weighted-average NVs.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in these reviews, we reviewed information from each respondent regarding the marketing stage involved in the reported home market or third country and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales, we considered the selling functions reflected in the starting prices before any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

Based on an analysis of the selling functions, class of customers, and level of selling expenses, we found that the marketing processes in both the home market/third country and the United States were not substantially dissimilar for Chandan, Facor, Isibars, Meltroll, Sindia, or Venus. Therefore, we have preliminarily found that sales in both markets for each respondent are at the same LOT and consequently, no LOT adjustment is warranted.

Export Price

In calculating the price to the United States, we used export price (''EP''), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States and use of constructed export price was not otherwise indicated.

We calculated EP based on either the CIF, C&F, or CFR price to the United States. In accordance with section 772(c)(2) of the Act, we made deductions, as appropriate, for rebates, foreign inland freight, international freight, marine insurance, brokerage and handling, clearing and forwarding, and customs duty. Furthermore, we made additions, as appropriate, for interest revenue.

Many respondents claimed an upward adjustment to EP for a ''duty drawback'' program. We determine whether an adjustment to U.S. price for a respondent's claimed duty drawback is appropriate when the respondent can demonstrate that it meets both parts of our two-part test. There must be: (1) A sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product (*see Certain Welded Carbon Standard Steel Pipes and Tubes from India,* 62 FR 47632, 47635 (September 10, 1997)). Because the respondents did not demonstrate a sufficient link between the import duty and the rebate, we have not made an adjustment to EP. Specifically, the respondents did not demonstrate that the rebate received upon exportation directly related to specific import duties paid on materials used in the production of the subject merchandise.

Normal Value

1. Comparison Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. When home market sales were determined to be insufficient in quantity to permit a proper comparison with sales to the United States, we compared the respondent's volume of sales of the foreign like product to individual third country markets to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

For Chandan, Facor, Isibars, and Sindia, we determined that the home market provides a viable basis for calculating NV because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV for these companies on the prices at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

For Meltroll and Venus, we determined that the home market was not appropriate for calculating NV because the aggregate volume of home market sales of the foreign like product was not greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we examined these companies' sales to third country markets. Both Meltroll and Venus had more than one third country market that satisfied the criteria of section 773(a)(1)(B)(ii) of the Act. To select among these markets, we considered the criteria outlined in 19 CFR 351.404(e): The similarity of the foreign like product exported to each third country versus subject merchandise exported to the United States; the volume of sales to the third countries; and other factors that we considered appropriate. For Meltroll, we selected Venezuela as the third country market. Although it was not the largest

third country market, the merchandise sold to Venezuela was more similar to the merchandise sold to the United States, the Venezuelan sales were contemporaneous with U.S. sales, while sales to the largest third country were not, and the volumes of the individual sales in Venezuela and the United States were comparable. For Venus, we chose Mexico as the third country market. Although it was not the largest third country market, the merchandise sold to Mexico was more similar to the merchandise sold by Venus to the United States. Both Meltroll's aggregate sales of the foreign like product to Venezuela and Venus' aggregate sales of the foreign like product to Mexico were greater than five percent of their sales, by volume, of the subject merchandise to the United States (see the Memoranda to Richard Moreland dated August 25, 1999, for Venus and August 26, 1999, for Meltroll, ''Selection of Third Country Comparison Market,'' which are available in the public records of the Department's Central Records Unit, Room B–099).

2. Cost of Production Analysis

As noted above, based on cost allegations made by the petitioners, the Department found reasonable grounds to believe or suspect that sales by Isibars in the comparison market were made at prices below its respective costs of production (''COP''). As a result, we have conducted an investigation to determine whether this company made comparison market sales during the POR at prices below its respective COP, within the meaning of section 773(b) of the Act. We also conducted a cost investigation for Facor, because we disregarded sales pursuant to the cost test for this company in the most recently completed previous review (*see Stainless Steel Bar from India: Final Results of New Shipper Antidumping Duty Administrative Review,* 63 FR 19712 (April 21, 1998).

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP, by model, based on the sum of the cost of materials, fabrication, general and administrative expenses, and packing costs. We relied on the COP data submitted by the companies.

B. Test of Comparison Market Prices

We compared the weighted-average COP for the respective companies to comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard comparison market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to comparison market prices, less movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product are made at prices below the COP, we do not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' However, where 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we determined that such sales have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that Facor and Isibars made home market sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

3. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV for Facor and Isibars based on the sum of the respective respondent's cost of materials, labor, overhead, G&A, selling, profit, and U.S. packing costs. (As discussed in the ''*Use of Facts Otherwise Available*'' section above, we did not calculate CV for Chandan because its CV information was incomplete.)

Price-to-Price Comparisons

For comparisons to those products for which there were comparison market sales at prices at or above the COP, we based NV on prices to comparison market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We also made additions and deductions, where appropriate, for interest revenue, rebates, inland freight, international freight, marine insurance, and brokerage and handling. In addition, we made circumstance-of-sale adjustments for credit and bank charges, where appropriate. Finally, in accordance with section 773(a)(6) of the Act, we deducted comparison market packing costs and added U.S. packing costs.

We note that, with respect to the calculation of Isibars' circumstance-of-sale adjustment, we have asked Isibars to clarify and provide further information on those sales for which it has not yet reported a payment date. In the event that Isibars is unable to comply with our request for information, we may resort to the use of facts available, which may, if appropriate, be adverse to the interests of the company.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

Preliminary Results of the Reviews

As a result of our comparison of EP and NV, we preliminarily determine the following weighted-average dumping margins:

Manufacturer/ Exporter	Period	Margin (percent)
Chandan	2/1/98–1/31/99	0.00
Facor	2/1/98–1/31/99	12.13
Isibars	2/1/98–1/31/99	0.42
Panchmahal	2/1/98–1/31/99	21.02
Parekh	2/1/98–1/31/99	21.02

Manufacturer/ Exporter	Period	Margin (percent)
Sindia	2/1/98–1/31/99	0.01
Venus	2/1/98–1/31/99	0.00
Viraj	2/1/98–1/31/99	21.02
Meltroll	2/1/98–1/31/99	0.00

In accordance with section 351.224(b) of our regulations, we will disclose to the relevant parties the calculations performed for these preliminary results. Any interested party may request a hearing within 30 days of publication. A hearing, if requested, will be held 37 days after the publication of this notice, or the first businessday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will issue the final results of these administrative and new shipper reviews, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of these administrative and new shipper reviews, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the same sales. In order to estimate the entered value, we subtracted international movement expenses (*e.g.,* international freight) from the gross sales value. This rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirements will be effective upon publication of the final results of these administrative and new shipper reviews for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of these reviews; (2) if the exporter is not a firm covered in these reviews, but was covered in a previous review or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the ''all others'' rate established in the LTFV investigation (59 FR 66915, December 28, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review, new shipper review, and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5649 Filed 3–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan; Final Results of Antidumping Duty New Shipper Review

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

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On October 12, 1999, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on static random access memory semiconductors from Taiwan. The products covered by this order are synchronous, asynchronous, and specialty static random access memory semiconductors from Taiwan, whether assembled or unassembled. The review covers one manufacturer/exporter. The period of review is October 1, 1997, through September 30, 1998.

We requested and received revised cost of production and constructed value databases from the respondent. We have used these databases, and we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–1776.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

The review covers one manufacturer/exporter, Giga Semiconductor, Inc. (GSI Technology). The period of review (POR) is October 1, 1997, through September 30, 1998.

On October 12, 1999, the Department published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on static random access memory semiconductors (SRAMs) from Taiwan (64 FR 55251). Also in October 1999, GSI Technology submitted revised cost of production and constructed value databases at the Department's request.

We invited parties to comment on our preliminary results of review and on the revised cost databases. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this review includes modules containing SRAMs. Such modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board. The scope of this review does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.,* SRAMs soldered onto motherboards).

The SRAMs within the scope of this review are currently classifiable under the subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, and 8542.13.8005 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties to this new shipper review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 2, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import__admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on the use of the revised cost data, we have made certain changes in the margin calculations. For a discussion of our these changes, see the ''Margin Calculations'' section of the Decision Memo, which is on file in room B–099 at the Department and available on the Web at www.ita.doc.gov/import__admin/records/frn.

Final Results of Review

We determine that the following weighted-average margin percentage exists for the period October 1, 1997, through September 30, 1998:

MARGIN

Manufacturer/exporter	(Percent)
GSI Technology	7.38

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the new shipper review for all shipments of SRAMs from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for GSI Technology will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 41.75. This rate is the ''All Others'' rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the first administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2) and 777(i) of the Act.

Dated: March 3, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Facts Available
2. Rejection of Post-Verification Cost Data
3. Constructed Export Price Offset

[FR Doc. 00–5650 Filed 3–7–00; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0006]

Platt Electric Supply, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1115.20(b)(4). Published below is a provisionally-accepted Settlement Agreement with Platt Electric Supply, Inc., containing monetary payments totaling between $1,000,000.00 and $1,500,000.00.

DATES: Any interested person may ask the Commission not to accept this Agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by March 23, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to ''Comment 00–C0006'', Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Howard N. Tarnoff, Trial Attorney, Office of Compliance, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, ext. 1382.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Orders appears below.

Dated: March 3, 2000.

Sadye E. Dunn,

Secretary.

Consent Agreement

This Consent Agreement is made by and between the staff of the Consumer Product Safety Commission (under authority delegated to the staff by the Commission) and Platt Electric Supply, Inc. (''Platt''), a domestic corporation, to settle allegations that Platt distributed in commerce certain allegedly defective in-wall electric heaters manufactured by Cadet Manufacturing Company (''Cadet''), a domestic corporation, with its principal place of business located at 2500 West Fourth Plain Boulevard, Vancouver, Washington 98660.

Parties

1. The ''staff'' is the staff of the Consumer Product Safety Commission (''the CPSC'' or ''the Commission''), an independent regulatory agency of the United States of America, established by Congress pursuant to Section 4 of the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2053, as amended.

2. Respondent Platt is a domestic corporation organized and existing under the laws of the State of Oregon, with its principal place of business located at 10605 SW Allen Boulevard, Beaverton, OR 97005. Platt is a distributor of electrical materials and products.

Subject Matter

3. Since approximately 1978, Cadet has allegedly manufactured, sold and/or distributed in commerce in-wall electric heaters for use in homes and residences under the brand names ''Cadet'' and ''Encore.'' These include all models and variants within each model of the series FW (including models FW–051, FW–101, FW–122, FW–202, and FW–751), manufactured between 1978 and 1987; series FX (including models FX–051, FX–052, FX–071, FX–072, FX–101, FX–102, FX–122, FX–151, FX–152, FX–202, and FX–242), manufactured between 1985 and 1994; series LX (including models LX–242, LX–302, LX–402, and LX–482), manufactured between 1985 and 1994; series TK (including models TK–051, TK–071, TK–072, TK–101, TK–102, TK–151, and TK–152), manufactured between 1984 and 1998; series ZA (including models ZA–051, ZA–052, ZA–071, ZA–072, ZA–101, ZA–102, ZA–122, ZA–151, ZA–152, ZA–202, and ZA–242), manufactured between 1985 and 1994; series Z (including models Z–072, Z–101, Z–102, Z–151, Z–152, Z–202, and Z–208), manufactured between 1993 and 1999; and all series and models of the same of functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX (including models RX–072, RX–101, RX–102, RX–151, RX–152, RX–202, and RX–242), manufactured between 1985 and 1994; series RLX (including models RLX– (including models RLX–302, RLX–402, and RLX–482) manufactured between 1985 and 1994; series RK (including RK–101 and RK–102), manufactured between 1984 and 1998; series RA (including models RA–101, RA–102, RA–151, RA–152, and RA–202), manufactured between 1985 and 1994; and series ZC (including models ZC–072, ZC–101, ZC–102, ZC–151, ZC–152, ZC–202, and ZC–208), manufactured between 1993 and 1999. For each of these heaters, the variants signified by the suffix T (with thermostat), W (white color), and TW (with thermostat and white color) found after the model number are included. All the heaters and variants referred to in this paragraph shall hereinafter be collectively referred to as ''the Heaters.'' The Heaters were sold and/or distributed to consumers principally in the States of California, Idaho, Montana, Oregon, and Washington. Since approximately 1985, Platt has allegedly sold and/or distributed certain of the Heaters in commerce.

4. On January 14, 1999, the staff filed an Administrative Complaint (''Complaint'') against Cadet, seeking a determination that certain of the Heaters present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), and public notice and a recall of certain of the Heaters pursuant to Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d). The Complaint alleged that certain of the Heaters are defective and present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), because their design and/or manufacture causes them to overheat, fail, and catch fire; and/or allows lint, dirt, or debris to build up within the heaters and catch fire. The Complaint also alleged that the design of certain of the Heaters can cause the Heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence, or energize the Heaters creating a risk of electric shock. CPSC has made no findings of fact or conclusions of law regarding these allegations. On July 30, 1999, the CPSC approved a Consent Agreement and Order (''the Cadet Order'') between the Staff and Cadet which, *inter alia,* required Cadet to undertake a remediation program for notification to consumers and for the replacement of the Heaters (''the Cadet Corrective Action Plan'' or ''the Plan''), upon final approval of the Plan by the United States Bankruptcy Court for the Western District of Washington at Tacoma (the date of final approval being referred to herein as the ''Effective Date'' of the Cadet Order).

Agreement of the Parties

5. It is the express purpose of the parties entering this Consent Agreement to protect the public safety by assisting Cadet's recall and replacement of the Heaters.

6. Fulfillment of the terms of this Consent Agreement and the attached Order (hereinafter ''Order'' or ''the Order''), which is hereby incorporated by reference, shall resolve all potential obligations of Platt (and each of Platt's predecessors, successors, assigns, parents, subsidiaries, affiliated entities,

agents, representatives, attorneys, employees, officers, directors, stockholders, and principals) (collectively ''the Platt Releasees'') under Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d), to give public notice of any alleged hazard presented by the Heaters, and to repair, replace, or refund the purchase price of the heaters. Fulfillment of the terms of this Consent Agreement and Order shall also resolve all potential obligations and liabilities of the Platt Releasees to the Commission for all other claims and causes of action relating to alleged defects in the Heaters, as described in paragraph 4 above. However, Platt is not released from any claims or causes of action based upon information knowingly withheld from or misrepresented to the CPSC staff by Platt. Nothing in this Paragraph 6 is intended to limit the CPSC's rights under Paragraph 21 of this Consent Agreement.

7. The staff believes that this Consent Agreement and Order is an equitable resolution of consumer claims against Platt for replacement heaters. The staff has concluded that the Cadet Corrective Action Plan, and Platt's participation in that Plan, will provide an effective, fair, reasonable and adequate remedy for consumers throughout the United States who own or are otherwise exposed to the Heaters by notifying consumers of the alleged hazard and providing replacement heaters to them, and that this Agreement is, therefore, in the best interests of the public.

8. This Consent Agreement and Order shall not be deemed or construed as an admission by Platt or as evidence: (a) Of any violation of law or regulation by Platt; (b) of other wrongdoing by Platt; (c) that the Heaters are defective, create a substantial product hazard, or are unreasonably dangerous; or (d) of the truth of any claims or other matters alleged or otherwise stated by the CPSC or any other person either against Platt or with respect to the Heaters or the Cadet Corrective Action Plan. Platt does not admit the factual allegations or other statements, or any conclusions of law, as alleged or otherwise stated in the Complaint or this Consent Agreement and Order which relate to the heaters.

9. Platt agrees not to contest in connection with this Consent Agreement and Order the staff's allegation that the Heaters are ''consumer products'' within the meaning of Section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

10. Platt agrees not to contest in connection with this Consent Agreement and Order the staff's allegation that Platt is a ''distributor'' of ''consumer product[s],'' which are ''distributed in commerce,'' as those terms are defined in Sections 3(a)(1), (5), and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11).

11. Platt agrees not to contest in connection with this Consent Agreement and Order the staff's allegation that the CPSC has jurisdiction over Platt and the Heaters under Section 3(a)(1), (5), and (11) and Section 15 of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11) and § 2064.

12. For purposes of this settlement only, Platt agrees not to contest the staff's allegation that the Heaters contain a ''defect which creates a substantial product hazard,'' as those terms are defined in Section 15(a) of the CPSA, 15 U.S.C. 2064(a).

13. Upon final acceptance by the CPSC of this Consent Agreement and Order, Platt and CPSC knowingly, voluntarily, and completely waive and relinquish any past, present, and/or future right or rights in this matter: (a) To the issuance of a proposed complaint in accordance with 16 CFR § 1115.20(b); to an administrative or judicial hearing, and to all further procedural steps—including findings of fact and conclusions of law—to determine whether the Heaters contain a defect which creates a substantial product hazard within the meaning of Section 15 of the CPSA; (c) to seek judicial review or otherwise challenge or contest the validity of this Consent Agreement and Order as issued and entered; (d) to seek judicial review of this or any past orders, findings, and/or determinations of the CPSC in this matter, except as set forth in Paragraphs 21, 22 and 25 of this Consent Agreement; and (e) to file any claim or to seek any remedy under the Equal Access to Justice Act.

14. The Order is issued under Sections 15 (c) and (d) of the CPSA, 15 U.S.C. 2064 (c) and (d), and a violation of this Consent Agreement and Order is a prohibited act within the meaning of Section 19(a)(5) of the CPSA, 15 U.S.C. 2068(a)(5), and may subject Platt to civil and/or criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. 2069 and 2070.

15. The parties agree to fulfill all requirements of this Consent Agreement and Order.

16. For all purposes, this Consent Agreement and Order shall constitute an enforceable judgment obtained in an action or proceeding by a governmental unit to enforce its police and regulatory power.

17. Platt acknowledges that any interested person may bring an action pursuant to Section 24 of the CPSA, 15 U.S.C. 2073, in any United States District Court in which Platt is found or transacts business, to enforce the Order and to obtain appropriate injunctive relief.

18. For the length of its term, this Consent Agreement and Order shall be binding upon and inure to the benefit of the parties hereto and their successors, assigns, and any operating bankruptcy trustees or receivers. If, prior to the termination of this Consent Agreement and Order, Platt merges with any other business entity or sells, assigns, or otherwise transfers substantially all of its assets, Platt shall provide reasonable prior notice to the surviving corporation or to the purchaser, assignee, or transferee of substantially all of Platt's assets, of this Consent Agreement and Order, and of its binding effect upon said surviving corporation, purchaser, assignee, or transferee. The existence of this Consent Agreement and Order and its binding effect shall be noted in any agreement between Platt and such surviving corporation, purchaser, assignee, or transferee. It shall be a condition of any such merger, sale, assignment, or transfer that the surviving corporation or the purchaser, assignee, or transferee shall execute a document agreeing to be bound by the provisions of this Consent Agreement and Order and shall submit to the jurisdiction of the CPSC for purposes of enforcement of this Consent Agreement and Order. In the event of any merger, sale, assignment, or transfer of substantially all of Platt's assets, Platt shall provide written notice to the staff at least sixty (60) days prior to any such merger, asset sale, assignment, or transfer.

19. The CPSC, the staff, and/or Platt may disclose terms of this Consent Agreement and Order to the public.

20. The staff is entering into this Consent Agreement and Order upon reliance that Platt and Cadet have executed a settlement agreement dated January 31, 2000 that resolves issues surrounding the June 22, 1999 DIP Loan and Security Agreement between Cadet, Platt, and Consolidated Electrical Distributors, Inc. (''DIP Loan and Security Agreement'').

21. The CPSC, upon reasonable notice to the staff and Platt, may void, suspend, or rescind all, or any part, of this Consent Agreement and Order if it reasonably concludes that: (a) Platt has made knowing and material misrepresentations regarding its financial condition as of the date of this Consent Agreement and Order; (b) in Platt's submission to the staff dated March 19, 1999, Platt knowingly and materially misrepresented the quantity of Heaters it sold; or (c) Platt and Cadet

have not executed the Platt/Cadet settlement agreement referred to in Paragraph 20 of this Consent Agreement. The CPSC may exercise its rights under this Paragraph 21 within, and not later than, 30 months from the Effective Date of the Cadet Order or the termination of this Consent Agreement and Order pursuant to paragraph 33, whichever occurs first. Any CPSC determination under this paragraph shall be subject to the dispute resolution procedures set forth in Paragraph 25.

22. If any provision of this Consent Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Consent Agreement and Order, such provision shall be fully severable. In such event, there shall be added as part of this Consent Agreement and Order a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal, or unenforceable. The rest of the Consent Agreement and Order shall remain in full effect, unless the CPSC reasonably determines, after providing Platt with notice and a reasonable opportunity to comment, that severing the provision materially impacts the Cadet Corrective Action Plan. The CPSC determination shall constitute the final agency decision and shall be subject to judicial review, such review to be based upon the record of any such CPSC proceeding and according to law.

23. This Consent Agreement and Order have been negotiated by the parties. Platt is not relying on the advice of the staff, nor anyone associated with the staff, except as otherwise set forth in this Consent Agreement and Order or in the letter from CPSC staff to Andrew S. Krulwich, Esq. dated February 8, 2000.

24. The provisions of this Consent Agreement and Order shall not be interpreted or construed against any person or entity because that person or any of its attorneys or representatives drafted or participated in drafting this Consent Agreement and Order.

25. The provisions of this Consent Agreement and Order shall be interpreted in a reasonable manner to effect its purpose to remedy the alleged hazard that the Heaters pose and to resolve alleged claims by the CPSC against Platt with respect to the Heaters. In the event of a dispute between the parties arising under this Consent Agreement and Order, the parties agree to submit the dispute to non-binding arbitration by a panel of three arbitrators, according to the rules of the American Arbitration Association then in effect. The CPSC and Platt shall each have the right to select one arbitrator, and shall jointly select the third arbitrator. If the CPSC and Platt are unable to agree on the selection of the third arbitrator, that arbitrator shall be selected by the American Arbitration Association. Either party may institute an action, following the non-binding decision rendered by the arbitration panel, in the United States District Court for the District of Columbia. Notwithstanding the foregoing, neither the arbitrators nor the CPSC shall have the authority to resolve disputes arising under the Platt/Cadet Settlement Agreement, nor may any rights or obligations arising out of the Platt/Cadet Settlement Agreement be enforced through this Consent Agreement and Order.

26. The existence of a dispute between the staff and Platt over any provision of this Consent Agreement and Order shall not excuse, toll, or suspend any obligation or deadline imposed upon Platt under this Consent Agreement and Order, other than the specific provision in dispute.

27. This Consent Agreement and Order shall not be waived, changed, amended, modified or otherwise altered, except in writing executed by the parties and approved by the CPSC.

28. This Consent Agreement and Order contain the entire agreement, understanding, representation, and interpretation of the parties herein, and nothing else may be used to vary or contradict its terms.

29. Platt makes the monetary payments described in Paragraphs 4 and 5 of the Order solely to fund the Cadet Corrective Action Plan and thereby to settle claims arising out of its alleged distribution of the Heaters. No payment made pursuant to or referred to in this Consent Agreement and Order is a fine or other penalty paid with respect to any violation of any law or regulation. Payment hereunder does not constitute, nor shall it be construed or treated as, payment in lieu of a fine or other penalty, punitive recovery, or forfeiture.

30. Platt and the staff consent to the entry of the Order attached hereto.

31. Upon provisional acceptance of this Consent Agreement and Order by the CPSC, this Consent Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR § 1115.20(b)(4). If the CPSC does not receive any written request not to accept this Consent Agreement and Order within fifteen (15) calendar days, this Consent Agreement and Order shall be deemed finally accepted on the twentieth (20th) calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR § 1115.20(b)(5).

32. Upon final acceptance by the CPSC of this Consent Agreement and Order, the CPSC shall issue the incorporated Order. This Consent Agreement and Order shall become effective upon service of the signed Order upon Platt.

33. Platt's Obligations under this Consent Agreement and Order shall terminate when Platt makes the final payment required under Paragraphs 4 and 5 of the Order.

34. The parties have executed two (2) identical copies of this Consent Agreement and the two copies shall be treated as one and the same executed Consent Agreement.

Dated: February 9, 2000.

Howard N. Tarnoff,

Trial Attorney.

Margaret H. Plank,

Trial Attorney.

Eric L. Stone,

Director, Legal Division.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; Telephone: (301) 504–0626, Facsimile: (301) 504–0359.

Harvey J. Platt,

Chairman & CEO, Platt Electric Supply, Inc., 10605 SW Allen Boulevard, Beaverton, OR 97005–4896; Telephone: (503) 526–2332, Facsimile: (503) 350–5579.

Order

Upon consideration of the Consent Agreement entered into between Respondent Platt Electric Supply, Inc. (''Platt'') and the staff of the Consumer Product Safety Commission (''the staff'') (collectively ''the parties''); and

The Consumer Product Safety Commission (''the CPSC'' or ''the Commission'') having jurisdiction over the subject matter and Platt;

It is hereby ordered that:

1. The Consent Agreement between Platt and the staff is incorporated herein by reference and accepted, and Platt shall comply with all obligations of the Consent Agreement and this Order.

2. Based on the Consent Agreement, the CPSC finds that the Consent Agreement and this Order are necessary to protect the public from the alleged hazard presented by Cadet Manufacturing Company's (''Cadet's'') series FW, FX, LX, TK, ZA and Z in-wall electric heaters, and the functionally identical heaters manufactured and distributed by Cadet

under the Encore brand name, including series RX, RLX, RK, RA, and ZC. These heaters shall hereinafter be collectively referred to as ''the Heaters.''

3. Platt shall immediately cease and despite offering for sale and/or distributing in commerce any of the Heaters, whether by itself or through its subsidiaries, affiliates, Platt-owned distribution centers, or any other persons or entities over whom Platt has control.

4. Platt shall pay into an escrow account (Chase Manhattan Trust Company, National Association, Account #76609060682) established by the staff and Cadet for the purpose of remediating the Heaters (''the Escrow Account''), the sum of ONE MILLION DOLLARS ($1,000,000) upon the CPSC's final acceptance of this Order.

5. Platt shall pay into the Escrow Account contingent contributions of an additional TWO-DOLLARS AND FIFTY CENTS ($2.50) for every heater in excess of two hundred and fifty thousand (250,000) heaters ordered by consumers under the Cadet Consent Agreement and Order, which was approved by the CPSC on July 30, 1999 (''the Cadet Order''); provided that the sum total of Platt's contingent contributions shall be capped at FIVE HUNDRED THOUSAND DOLLARS ($500,000). Platt shall pay contingent contributions within thirty (30) days of Platt's receipt of quarterly written notice from the staff specifying the number of replacement heaters in excess of 250,000 ordered by consumers within twenty-four (24) months after the Effective Date of the Cadet Order issued by CPSC on July 30, 1999.

6. The CPSC may authorize the distribution of the monetary payments referred to in Paragraphs 4 and 5 above to offset any expenses directly related to Cadet's CPSC-approved Corrective Action Plan. Should Cadet fail in its obligations under the Corrective Action Plan, CPSC may authorize the distribution of the monetary payments in paragraphs 4 and 5 above to otherwise remedy the alleged hazard posed by the Heaters; however, no such failure on the part of Cadet shall change the amount or schedule of payments due under this Order or change the rights and duties of Platt under the Consent Agreement.

7. In addition to any penalty it may incur pursuant to Paragraph 14 of the Consent Agreement, if Platt fails to make timely contributions to the Escrow Account, as required by Paragraphs 4 and 5 of this Order, Platt shall be liable for additional contributions to the Escrow Account consisting of the following:

a. Interest at the percentage rate established by the Department of the Treasury pursuant to 31 U.S.C. 3717, for any period after the due date; and

b. A five percent (5%) per month penalty charge if the contribution is not made within thirty (30) days after the due date.

Provisionally accepted and Provisional Order issued on the 3rd day of March, 2000.

By Order of the Commission:

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–5671 Filed 3–7–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0076]

Proposed Collection; Comment Request Entitled Novation/Change of Name Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0076).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Novation/Change of Name Requirements. This OMB clearance expires on May 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before May 8, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA, (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts, or (2) a name change, it must submit certain documentation to the Government.

B. Annual Reporting Burden

Respondents: 1,000.
Responses per respondent: 1.
Total responses: 1,000.
Preparation hours per response: .458.
Total burden hours: 458.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: March 3, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–5612 Filed 3–7–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0147]

Proposed Collection; Comment Request Entitled Pollution Prevention and Right-To-Know Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0147).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44

U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Pollution Prevention and Right-to-Know Information. This OMB clearance expires on May 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before May 8, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA, 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

Executive Order 12856 of August 3, 1993, ''Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements,'' requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 and the Emergency Planning Community Right-to-Know Act of 1986. The Executive Order requires that contracts to be performed on a Federal facility provide for the contractor to supply to the Federal agency all information the Federal agency deems necessary to comply with these reporting requirements.

B. Annual Reporting Burden

Number of Respondents: 2,550.
Responses Per Respondent: 7.6.
Total Responses: 19,380.
Average Burden Per Response: 45 minutes.
Total Burden Hours: 14,535.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0147, Pollution Prevention and Right-to-Know Information in all correspondence.

Dated: March 3, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–5613 Filed 3–7–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATE: Interested persons are invited to submit comments on or before May 8, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 2, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: The Program for North American Mobility in Higher Education.

Frequency: Annually.

Affected Public:

Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 20.

Burden Hours: 400.

Abstract: The Program for North American Mobility In Higher Education is a competition grant program which supports institutional cooperation and student exchange among the countries of the U.S., Mexico, and Canada. Funding supports the participation of U.S. institutions and students in trilateral consortia of institutions of higher education. Funding will be multi-year, with projects lasting up to four years.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708-9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5575 Filed 3–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 8, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 2, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Annual Performance Reporting for the Gaining Early Awareness for Undergraduate Programs (GEAR UP) Grantees.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 185.

Burden Hours: 6,475.

Abstract: The purpose of this information collection is accountability for program implementation and student outcomes for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP). The information collected enables the U.S. Department of Education to demonstrate its progress in meeting the GEAR UP performance objectives as reflected in the indicators.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5576 Filed 3–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 7, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 2, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Type of Review: Reinstatement.

Title: Indian Education Formula Grant Program Application.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,270.

Burden Hours: 22,766.

Abstract: Application for funding under the Indian Education Formula Grant Program to Local Educational Agencies used to determine applicant eligibility and amount of award for projects funded.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 202–708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5577 Filed 3–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 7, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 2, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Migrant Education Even Start Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 2,700.

Abstract: The Migrant Education Even Start Program (MEES) is designed to help break the cycle of poverty and improve literacy by integrating early childhood education, adult literacy or adult basic education, and parenting into a unified literacy program for migrant families.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 202–708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5578 Filed 3–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice; Computer matching between the Department of Education and the Department of Justice.

SUMMARY: Section 5301(a)(1) of the Anti-Drug Abuse Act of 1988 (now designated as section 421(a)(1) of the Controlled Substances Act (21 U.S.C. 862(a)(1)) includes provisions regarding the judicial denial of Federal benefits. Section 5301 authorizes Federal and State judges to deny certain Federal benefits (including student financial assistance under Title IV of the Higher Education Act of 1965, as amended) to individuals convicted of drug trafficking or possession.

In order to ensure that Title IV student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to section 5301, the Department of Justice and the Department of Education implemented a computer matching program. The current computer matching agreement expires on March 3, 2000. The Department of Education must continue to obtain from the Department of Justice identifying information regarding individuals who are the subject of section 5301 denial of benefits court orders. The purpose of this notice is to announce the continued operation of the computer-matching program and to provide certain required information concerning the computer-matching program.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (see 54 FR 25818, June 19, 1989), and OMB Circular A–130, the following information is provided:

1. Names of Participating Agencies

The Department of Education (ED) (recipient agency) and the Department of Justice (source agency) (DOJ).

2. Purpose of the Match

This matching program is designed to assist ED in enforcing the sanctions imposed under section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690).

3. Authority for Conducting the Matching Program

Under section 5301 of the Anti-Drug Abuse Act of 1988, as amended (21 U.S.C. 862), ED must deny Federal benefits to any individual upon whom a Federal or State court order has imposed a penalty denying eligibility for those benefits. Student financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA) is a Federal benefit under section 5301 and ED must, in order to meet its obligations under the HEA, have access to information about individuals who have been declared ineligible under section 5301.

Section 5301 and the Procedures for Implementation of section 5301 (Pub. L. 100–690), transmitted to the Congress on August 30, 1989, direct DOJ to act as an information clearinghouse for Federal agencies. While DOJ provides information about section 5301 individuals who are ineligible for Federal benefits to the General Services Administration (GSA) for inclusion in GSA's List of Parties Excluded from Federal Procurements and Nonprocurement Programs, DOJ and ED have determined that matching against the DOJ data base is more efficient and effective than access to the GSA List. The DOJ data base has specific information about the Title IV, HEA programs for which individuals are ineligible and has more complete identifying information about those individuals than does the GSA List. Both these elements are essential for a successful match.

4. Categories of Records and Individuals Covered by the Match

ED will submit for verification records from its Central Processing System files (Federal Student Aid Application File (18–11–01)) the social security number (SSN) and other identifying information for each applicant for Title IV student financial assistance. ED will use the SSN and the first two letters of an applicant's last name for the match.

The DOJ Denial of Federal Benefits Clearing System (DEBAR)(OJP–0013) contains the names, social security numbers, dates of birth, and other identifying information regarding individuals convicted of Federal or State offenses involving drug trafficking or possession of a controlled substance who have been denied Federal benefits by Federal or State courts. This system of records also contains information concerning the specific program or programs for which benefits have been denied. DOJ will make available for the matching program the records of only those individuals who have been denied Federal benefits under one or more of the Title IV, HEA programs.

5. Effective Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and OMB (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C.552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program or obtain additional information about the program including a copy of the computer matching agreement between ED and DOJ should contact Ms. Edith Bell, Program Specialist, U.S. Department of Education, Room, 3053, ROB–3, 400 Maryland Avenue, SW, Washington, D.C. 20202–5400. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

You may inspect all public comments about this matching program at Regional Office Building 3, 7th and D Streets, SW, Room 3045, Washington, DC, between the hours of 8:30 am and 4 pm, Eastern time, Monday through Friday of each week except Federal holidays.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html
http://ifap.ed.gov

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**.

Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

Dated: February 28, 2000.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 00–5602 Filed 3–7–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Golden Field Office; Supplemental Announcement to the Broad Based Solicitation for Financial Assistance Applications Involving Research, Development and Demonstration for the Office of Energy Efficiency and Renewable Energy; University Research for the Advancement of the Solar Dish/Converter Technology

AGENCY: U.S. Department of Energy.

ACTION: Supplemental Announcement 06 to the Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration DE–PS36–00GO10482

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications from accredited colleges or universities for the advancement of solar dish/converter technology. The financial assistance awards issued as a result of this Supplemental Announcement will be cooperative agreements.

DATES: DOE expects to issue the Supplemental Announcement in March 2000.

ADDRESSES: Copies of the Supplemental Announcement, once issued, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html. It is DOE's intention not to issue hard copies of the Solicitation.

SUPPLEMENTARY INFORMATION: Under this Supplemental Announcement, DOE is soliciting Applications from accredited colleges or universities for fundamental research that advances solar dish/converter technology. Innovative subsystem, component, or system concepts are sought for ultimate integration into a technically and economically viable dish/converter system in the 1 to 5 kW_e range. The

development of alternate or advanced power conversion devices, advancements of dish concentrator components, and the integration of these conversion devices and concentrator concepts are of specific interest.

A goal of DOE's Concentrating Solar Power (CSP) Program is the development of clean, competitive, and reliable power options using concentrated sunlight. To achieve this goal, the Department of Energy is interested in fundamental research that will advance existing solar dish/converter technology through improved performance, increased reliability, and reduced cost. The DOE is also interested in supporting research of new and innovative system concepts which have the potential for efficiently converting concentrated solar energy to electricity in the 1 to 5 kW_e range. To improve the economic viability, small-scale (5–10 m^2) concentrators can be combined with potentially reliable, low-cost 1–5 kW_e converter options such as concentrating PV or small free-piston Stirling engines.

Applicants are requested to conduct fundamental research that either advances the performance of dish/converter technologies or the development of new system concepts and to demonstrate system or component performance through test, modeling, or analysis. Research should be directed towards the design and development of subsystems, components, or system designs through the enhancement or adaptation of existing technology or through the development of advanced technologies.

System or component concepts with the potential to improve dish/converter technology performance, operability, and economics will be major factors in selecting Applications for award. Successful Applicants will develop designs that can lower system cost (i.e., capital, installation, operation, or maintenance), improve performance, and increase system reliability and maintainability. As part of the research, design concepts or component performance must be verified through test, modeling, or analysis. Submittal and acceptance of an interim report, along with a design review, will be required prior to proceeding with prototype development or concept verification. Eligibility for continued funding will be based on the quality of the interim report, results of the design review, viability of the design, and the availability of DOE funding.

Applications under this Supplemental Announcement must demonstrate the capabilities, commitment, and resources necessary to conduct the research and the potential to either enhance or adapt existing technology or advance the state of solar dish/converter technology. Technical support and assistance may be provided by the Department of Energy, through the National Laboratories. Any specific support through a Federally Funded Research and Development Center (FFRDC), which includes all DOE National Laboratories, should be included as a separate task in the Statement of Work and the related costs separately identified. These costs should not be included in the proposed budget.

Only accredited colleges or universities are eligible to apply for Financial Assistance under this Supplemental Announcement. Awards under this Supplemental Announcement will be Cooperative Agreements with terms of up to three years. Subject to funding availability, a total of $2,000,000 in DOE funding is anticipated over a three year period for all awards under this Supplemental Announcement. The DOE anticipates selecting three to five applications for award under this Supplemental Announcement. However, upon funding availability, DOE reserves the right to fund portions of additional applications. As fundamental research is solicited through this Supplemental Announcement, no cost share is required in order to be considered for award under this solicitation. However, cost share will be considered in selecting applications for award.

Solicitation Number DE–PS36–00GO10482, in conjunction with Supplemental Announcement 06, will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. Responses to the Supplemental Announcement will be due approximately 90 days following issuance of the Supplemental Announcement. Questions should be submitted in writing to: Ruth E. Adams, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393; transmitted via facsimile to Ruth E. Adams at (303) 275–4788; or electronically to ruth__adams@nrel.gov.

FOR FURTHER INFORMATION CONTACT: Ruth E. Adams, Contracting Officer, at 303–275–4722, e-mail ruth__adams@nrel.gov.

Issued in Golden, Colorado, on February 29, 2000.

Jerry L. Zimmer,

Procurement Director, GO.

[FR Doc. 00–5656 Filed 3–7–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–188–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

March 2, 2000.

Take notice that on February 29, 2000, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered as part of its FERC Gas Tariff, Original Volume No. 2, Seventeenth Revised Sheet No. 245 and Thirty-Second Revised Sheet No. 1000, proposed to be effective March 31, 2000.

Great Lakes states that the above-named tariff sheet is being filed to reflect the addition of an evergreen clause to Rate Schedule T–10 between Great Lakes and ANR Pipeline Company (ANR).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5594 Filed 3–7–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00642; FRL–6491–5]

Pesticide Product Registration Maintenance Fee; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): ''Pesticide Product Registration Maintenance Fee'' (OMB Control Number 2070–0100; EPA No. 1214.05). This is a request to renew an existing ICR that is currently approved and due to expire September 30, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00642, must be received on or before May 8, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00642 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Field and External Affairs Division (Mail code 7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide registrant with a product registered under section 3 and section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Potentially affected categories and entities may include, but are not limited to:

Category	NAICS code	SIC codes	Examples of potentially affected entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6079 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00642. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00642 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: ''opp-

docket@epa.gov,'' or you can submit a computer disk as described in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00642. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Pesticide Product Registration Maintenance Fee.

ICR numbers: EPA ICR No. 1214.05, OMB No. 2070–0100.

ICR status: This a renewal of an existing ICR that is currently approved by OMB and is due to expire September 30, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to the approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: This information collection program provides a practical means of communication between the registrants and the Agency to collect the pesticide product registration maintenance fees as required by section 4(i)(5) of FIFRA as amended. Each affected firm is required to complete a filing form and submit their fee payment by January 15 of each year. Respondents complete and submit EPA Form 8570–30 indicating the respondent's liability for the registration maintenance fee. The Agency provides registrants a list of the registered products currently registered with the Agency. Registrants are provided the opportunity to review the list, determine its accuracy, and remit payment of the maintenance fee. The list of products has space identified for marking those products to be supported and those products that are to be canceled. The registrants are also instructed to identify any products on the list which they believe to be transferred to another company, and to add to the list any products which the company believes to be registered that are not on the Agency list. The failure to pay the required fee for a product will result in cancellation of that product. Since 1994, the number of registrants to which these forms are sent has remained fairly stable at around 2,000. No changes in the substance or in the method of collection is proposed in this ICR renewal request.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden is estimated at 0.94 per collection. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 1,977.

Frequency of response: Annually, by January 15.

Estimated total/average number of responses for each respondent: Dependent upon number of registrations held.

Estimated total annual burden hours: 1,858 hours.

Estimated total annual burden costs: $177, 870.69.

VI. Are There Changes in the Estimates from the Last Approval?

Few changes have occurred since the last approval. Most firms have filed the form in the past 6 years and are familiar with the annual requirement, and with the form itself. Most of the companies hold 10 or fewer products, and find that it takes only a few minutes to complete the form. The Agency believes that access and use of a toll free help line has paid great dividends in assisting respondents with questions. Therefore, the burden has remained relatively unchanged from the most recent renewal.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under ''FOR FURTHER INFORMATION CONTACT.''

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 18, 2000.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–5048 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00643; FRL–6493–9]

Submission of Unreasonable Adverse Effects Information Under FIFRA Section 6(a)(2); Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that the EPA is seeking public comment on the following Information Collection Request (ICR): ''Submission of Unreasonable Adverse Effects Information Under FIFRA Section 6(a)(2)'' (EPA ICR No. 1204.08, OMB No. 2070–0039). This ICR involves a collection activity that is currently approved and due to expire on September 30, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00643, must be received on or before May 8, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00643 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Field and External Affairs Division, (7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide registrant. Under section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide registrants are required to submit any factual information regarding adverse effects associated with their pesticidal products, and it is up to the Agency to determine whether or not that factual information constitutes an unreasonable adverse effect. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS code	SIC codes	Examples of potentially affected entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6080 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00643. The official record consists of the documents specifically referenced in this action,

any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00643 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00643. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Submission of Unreasonable Adverse Effects Information Under FIFRA Section 6(a)(2).

ICR numbers: EPA ICR No. 1204.08, OMB No. 2070–0039.

ICR status: Currently approved and due to expire on September 30, 2000.

Abstract: This information collection renewal proposal covers the burden estimates related to section 6(a)(2) of FIFRA requirements for pesticide registrants to submit information to the Agency which may be relevant to the balancing of the risks and benefits of a pesticide product. In *CSMA and NACA* v. *EPA* 484 F. Supp. 513 (1980), the District Court of the District of Columbia agreed with EPA that FIFRA section 6(a)(2) covers all information relevant to EPA's determination of whether a pesticide may cause unreasonable adverse effects. The Court agreed that submissible information includes the same type of information as that provided by a registrant as part of an application for registration. The Court specifically rejected the argument that the responsibility for determining what constitutes an unreasonable adverse effect shifts to industry once EPA has granted a registration. In order to limit the amount of less meaningful information that might be submitted to the Agency, the EPA has limited the scope of factual information that the registrant must submit. On September 19, 1997 the Agency published final regulations in the **Federal Register** (62 FR 49370) (FRL–5739–1) that provided a detailed description of the reporting obligations of registrants under FIFRA section 6(a)(2). The regulations became effective on the deferred date of August

17, 1998 (63 FR 41192) (FRL–6016–2). There are no forms associated with this collection.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden is estimated at 166,266 burden hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 1,890.

Estimated total number of potential respondents: 260.

Frequency of response: As necessary, when applicable information is available to respondent.

Estimated total annual burden hours: 166,266.

Estimated total annual burden costs: $13,870,860.

VI. Are There Changes in the Estimates from the Last Approval?

In the previous ICR, OMB approved 120,762 burden hours for submission of information from pesticide registrants under FIFRA section 6(a)(2) with an estimated cost of $11 million. This ICR renewal request reflects an increase of approximately 45,000 burden hours to an annual respondent burden of 166,266 hours at a cost of nearly $14 million. The change in burden reflects a number of adjustments over the prior ICR. First, for the renewal ICR, there are fewer registrants of active products (1,890 versus 2,100) and fewer employees to be trained (18,900 versus 21,000) than reflected in the prior ICR. In addition, the prior ICR's efforts associated with learning the new regulatory program, establishing processes and systems to implement the new program, and training all employees on the new requirements are eliminated in the renewal. Burden estimates related to the amount of studies the respondents might submit on an annual bases have been reduced from the previous projection of 600 studies to 350 studies. The ICR renewal request anticipates submission of many more incident reports than estimated in the prior ICR (46,000 versus 15,540). EPA proposes to seek approval for 166,266 annual burden hours for this renewal ICR.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under ''FOR FURTHER INFORMATION CONTACT.''

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 25, 2000.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–5392 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6548–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Off-Site Waste and Recovery Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: National Emission Standards For Hazardous Air Pollutants (NESHAP) For Off-Site Waste And Recovery Operations OMB Control Number 2060–0313, expiration date May 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 7, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1717.03. For technical questions about the ICR contact Walter De Rieux at (202) 564–7067.

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards For Hazardous Air Pollutants (NESHAP) For Off-Site Waste And Recovery Operations, OMB Control Number 2060–0313, EPA ICR Number 1717.03, expiration date 5/31/2000. This is a request for extension of a currently approved collection.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP), were proposed on October 13, 1994 and promulgated on July 1, 1996. These standards provide for control of hazardous air pollutants (HAP) emissions from selected facilities involved in waste management and recovery operations that are not subject to federal air standards under other subparts in 40 CFR part 63 commencing construction, modification or reconstruction after the date of proposal if the facility is a ''major source'' of HAP emissions. Major source is defined in the general provisions to 40 CFR part 63 or the facility potential to emit is more than 10 tons per year for a single HAP or more than 25 tons per year for multiple HAP. In addition, subpart DD cross-references control requirements to be applied to specific types of affected sources: tanks-level 1, containers, surface impoundments, individual drain systems, oil-water separators and organic water separators, loading, transfer, and storage systems. This information is being collected to assure compliance with 40 CFR part 63, subpart DD. Organic HAP emissions are the pollutants regulated under this subpart.

Owners or operators of the affected facilities described must make one-time-only notifications. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports of excess emissions (or reports certifying that no exceedances have

occurred) are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NESHAP.

These standards rely on the control of organic HAP emissions by control technology. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, leaks are being detected and repaired and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 1999 (64 FR 58396); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 162 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Off-Site Waste and Recovery Operations.

Estimated Number of Respondents: 250

Frequency of Response: On occasion and Semi-annually

Estimated Total Annual Hour Burden: 162,050

Estimated Total Annualized Capital, O&M Cost Burden: 0. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1717.03 and OMB Control No. 2060–0313 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania, Ave., NW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 1, 2000.

Oscar Morales,

Director Collection Strategies Division.

[FR Doc. 00–5624 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6547–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Health Effects of Particulate Matter and Co-Pollutant Exposures Near the El Paso/Juarez Border Crossings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Health Effects of Particulate Matter and Co-pollutant Exposures Near the El Paso/Juarez Border Crossings; EPA ICR Number: 1940.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 7, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1940.01. For technical information about the collection contact Dr. Melissa Gonzales, (919) 966–7549, FAX: (919) 966-7584, E-mail: gonzales.melissa@epa.gov, or by mailing a request to Dr. Melissa Gonzales, US EPA (MD 58–A), Research Triangle Park, NC, 27711.

SUPPLEMENTARY INFORMATION: *Title:* Health Effects of Particulate Matter and Co-pollutant Exposures Near the El Paso/Juarez Border Crossings (EPA ICR No. 1940.01). This is a new collection.

Abstract: The proposed study will be conducted by the Epidemiology and Biomarkers Branch, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development, US EPA. The purpose of this study is to examine the respiratory health effects in school children due to motor vehicle-related air pollutants. Further knowledge regarding the respiratory health effects of airborne particulate matter is required to reduce scientific uncertainties in the development of an Air Quality Criteria for Particulate Matter under the Clean Air Act (42 U.S.C. 7403(d)).

The El Paso, Texas metropolitan area was selected for study because of high traffic volume and meteorological conditions. Heavily traveled interstate freeways run through the city, and over 18 million vehicles annually cross the international border between El Paso and Ciudad Juarez, Mexico. Wintertime temperature inversions routinely trap vehicle emissions close to the ground leading to violations of the National Ambient Air Quality Standards.

The parents of all children enrolled in the third and fourth grades of the El Paso Independent School District will receive an eight-page respiratory health questionnaire in both English and Spanish along with a written request for permission for their children to participate in a lung function examination at their school. Study participation is entirely voluntary. The questionnaire conforms to the American Thoracic Society standards and consists of questions specific to the child such as general demographic information, childhood respiratory illness, history of asthma, and current respiratory health conditions. There also are questions regarding household characteristics and family history of smoking, asthma, and respiratory illnesses. Each parent will be asked to complete the questionnaire, seal the completed form in the envelope provided, and send the envelope back to the teacher with the child.

In the subsequent school year, ambient air pollutants will be measured

at twenty-two elementary schools in El Paso selected to represent areas close to and far away from the city center, and the border crossings as well as those areas in between. At these schools, those children who received parental permission on a returned questionnaire will attempt to perform a lung function examination. The examination, conducted according to American Thoracic Society guidelines, consists of blowing three to eight times into a tube connected to a spirometer and is no more stressful than blowing out a candle. A new, sterile, disposable mouthpiece will be used for each child. A field technician will record each child's height and weight, and coach the child to perform the breathing test. The examinations will be conducted in the child's elementary school during normal school hours with a school nurse on site.

The information collected in this study will be used by scientists within EPA's Office of Research and Development. The data will be used to: (i) provide a better understanding of the association between exposures to particulate matter and co-pollutants and respiratory illness in children; (ii) assess the classification of children's exposure using data from the study questionnaire, direct air pollutant measurements and exposure models for refining exposure estimation methods in air pollution health studies; (iii) identify key exposure factors for school age children to air pollutants; (iv) assess the prevalences of pulmonary illness, including reduced lung function, in school children living in a metropolitan area along the US-Mexico border. The information will appear in the form of EPA reports, journal articles, and will also be made publicly available.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 13, 1999 (64 FR 69528); no comments were received.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 0.40 hours for each questionnaire response and 0.35 hours for each lung function examination. There are no direct respondent costs for this data collection. There is no annual recordkeeping burden for this ICR. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: School officials, parents and children in the El Paso Independent School District.

Estimated Number of Respondents: 13,400.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 5,145 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1940.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 2, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–5625 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6547–7]

Pesticides; Application for Experimental Use Permit (EUP) To Ship and Use a Pesticide for Experimental Purposes Only; Submission of EPA ICR No. 0276.09 to OMB for Review and Approval; Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only, (EPA ICR No. 0276.09, OMB No. 2070–0040) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which was scheduled to expire on November 31, 1999, and has been extended until May 31, 2000. A **Federal Register** notice announcing the Agency's intent to seek OMB approval for this ICR and a 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on September 15, 1999 (64 FR 50081). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before April 7, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Sandy Farmer by phone at (202) 260–2740, or via e-mail at ''farmer.sandy@epa.gov'', or using the address indicated below. Please refer to EPA ICR No. 0276.09 and OMB Control No. 2070–0040. For technical questions about the ICR contact Angela Hofmann at (202) 260–2922.

ADDRESSES: Send comments to:

Ms Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to:

Office of Information and Regulatory Affairs, Office of Management and

Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: *Review Requested:* This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

Title: Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only.

Abstract: This information collection program provides the EPA with the data necessary to determine whether to issue an experimental use permit under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. FIFRA requires that before a pesticide product may be distributed or sold in the U.S. it must be registered by EPA. However, section 5 authorizes EPA to issue experimental use permits which allow pesticide companies to temporarily ship pesticide products for experimental use for the purpose of gathering data necessary to support the application for registration of a pesticide product. In general, EUP's are either issued for a pesticide not registered with the Agency or for a registered pesticide for a use not registered with the Agency.

The information collected and reported under an EUP is a summary of that which is routinely submitted in connection with registration. The EUP allows for large scale field testing, if necessary, in order to collect sufficient data to support registration. An EUP is not required if the person conducting the tests does not expect to receive benefits in pest control.

EPA Form 8570–17, *Application For An Experimental Use Permit To Ship And Use A Pesticide For Experimental Purposes Only,* is filed by the prospective registrant for a permit to generate information or data necessary to register a pesticide under section 3 of FIFRA. This information from the applicant is necessary in order to grant and effectively monitor the EUP. Beyond the information as supplied on EPA Form 8570–17, is a final report on the results of the experimental program which includes information such as: amount of the product applied; the crops or sites treated; any observed adverse effects; any adverse weather conditions which may have inhibited the program; the goals achieved; and the disposition of containers, unused pesticide material, and affected food/feed commodities.

If the food/feed treated under the terms of an experimental use permitted are to be shipped in commerce, the applicant must also submit a petition for temporary tolerance pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA). This program is more fully described in ICR No. 2070–0024, ''Maximum Residue Limit (MRL) Petitions for Pesticides on Food/Feed and New Inert Ingredients, EPA No. and not covered under this ICR. In addition, the activities related to pesticide registration, e.g., labeling and recordkeeping, are covered by a separate ICR (EPA ICR No. 0277; OMB Control No. 2070–0060).

Burden Statement: The annual ''respondent'' burden for the Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only regulation is estimated to average 10.10 hours per application. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: EUP applicants.

Estimated Number of Respondents: 75.

Frequency of Response: Only when an application is made.

Estimated total/average number of responses for each respondent: 1.

Estimated Total Annual Burden: 757.

Estimated Total Annualized Labor Costs: $61,297.

Changes in Burden Estimates: The change in respondent burden hours, from 1,303 to 757 hours per year is a result of the estimated reduction in the number of annual respondents, from 110 to 75. The change in annual respondent labor cost is a result of the estimated increase in hourly rates. —

Dated: March 2, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–5626 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6548–4]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Science Applications International Corporation and its Subcontractors

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for comment.

SUMMARY: The U. S. Environmental Protection Agency (''EPA'') hereby complies with the requirements of 40 CFR 2.310(h) for authorization to disclose to the Science Applications International Corporation (''SAIC''), of San Francisco, California, and its subcontractors, Superfund confidential business information (''CBI'') submitted to EPA Region 9.

DATES: Comments may be submitted by March 22, 2000.

ADDRESSES: Comments should be sent to: Environmental Protection Agency, Region 9, Katherine Meltzer (PMD–8), 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Katherine Meltzer, Policy & Management Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1609.

Notice of Required Determinations, Contract Provisions and Opportunity to Comment: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'') as amended, (commonly known as ''Superfund'') requires completion of enforcement activities at Superfund sites in concert with other site events. EPA has entered into a contract, No. 68-S9–00–01, with SAIC for Superfund enforcement support services. These services will be provided to EPA by SAIC and its subcontractors Cotton & Co. of Alexandria, VA; Indus Corporation of Vienna, VA; Jonas & Associates, Inc. of Walnut Creek, CA; Petroleum Properties of Dixon CA; KPMG LLP of San Francisco, CA; McDonald & Associates of Capay, CA; Orswell & Kasman of Pasadena, CA; Power Partners, Inc. of San Francisco, CA; and ReVision, Inc. of Denver, CO. EPA has determined that disclosure of CBI to SAIC employees, and its subcontractors' employees, is necessary in order that SAIC may carry out the work required by that contract with EPA. The information EPA intends

to disclose includes submissions made by Potentially Responsible Parties to EPA in accordance with EPA's enforcement activities at Superfund sites. The information would be disclosed to the contractor and its subcontractor for any of the following reasons: to assist with document handling, inventory, and indexing; to assist with document review and analysis; to verify completeness; and to provide technical review of submittals. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii), incorporated by reference into 40 CFR 2.310(h)(2). EPA Region 9 will require that each SAIC employee and subcontractor employee sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by SAIC and its subcontractors for performance of the work required by the contract or upon completion of the contract or subcontract.

Dated: February 28, 2000.

Michael Feeley,

Acting Director Superfund Division, Region 9.

[FR Doc. 00–5628 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6548–5]

Great Lakes International Coastal Wetlands Monitoring

AGENCY: Environmental Protection Agency.

ACTION: Notice of funding availability.

SUMMARY: EPA's Great Lakes National Program Office (GLNPO) is now requesting the submission of full proposals for GLNPO funding. The purposes of this request for proposals are (1) To design, and validate, indicators to assess the ecological integrity of Great Lakes coastal wetlands, (2) To design an implementable, long-term program to monitor Great Lakes coastal wetlands, and (3) To create, and populate, a binational database accessible to all scientists, decision makers and the public. GLNPO is requesting proposals from institutions or organizations which have the capacity and experience to serve as the manager and fiscal agent representing a binational, multi-disciplinary, broad-based consortium of Great Lakes wetland scientists and wetland resource managers. The successful applicant will enter into a Cooperative Agreement with GLNPO to accomplish the three purposes stated above. GLNPO will provide $400,000 of funding during Fiscal Year 2000 to be supplemented by at least $200,000 from the consortium submitting the successful proposal for a one year funding and project period. If the GLNPO budget remains consistent and the successful cooperative agreement applicant (applicant) makes adequate progress toward meeting the expectations discussed below, it is anticipated that the applicant will be able to apply annually for an additional $400,000 from GLNPO ecological protection and restoration funds for two subsequent one year funding and project periods during Fiscal Years 2001 and 2002. This anticipated future funding by GLNPO will also require the applicant to provide at least $200,000 annually in supplemental funds.

DATES: The deadline for the submission of full proposals is April 28, 2000.

ADDRESSES: *Document Availability:* The *Request for Full Proposals: Great Lakes International Coastal Wetlands Monitoring* is now available by contacting Dr. John Schneider at 312–886–0880 or by mail at the following address: U.S. Environmental Protection Agency, Great Lakes National Program Office (G–17J), Attn: Dr. John Schneider, 77 West Jackson Blvd., Chicago, IL 60604–3590

FOR FURTHER INFORMATION CONTACT: Dr. John Schneider, U.S. Environmental Protection Agency, Great Lakes National Program Office (G–17J), 77 West Jackson Blvd., Chicago, IL 60604–3590 or at 312–886–0880.

Dated: March 1, 2000.

Gary V. Gulezian,

Director, Great Lakes National Program Office.

[FR Doc. 00–5621 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[SW–FRL–6548–7]

Notice of Proposed Decision on Request by FMC Corporation for an Extension of the Land Disposal Restrictions Effective Date for Five Waste Streams Generated at the Pocatello, Idaho Facility

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed decision.

SUMMARY: EPA (''the Agency'' or ''we'' in this notice) is proposing to approve the request submitted by FMC Corporation (FMC) for a one-year Case-by-Case (CBC) extension of the May 26, 2000, effective date of the RCRA land disposal restrictions (LDRs). FMC requested the CBC extension due to the lack of available treatment capacity for five waste streams and the need for additional time to design, construct, and begin operation of an on-site treatment plant. For this CBC extension to be approved, FMC must make each of the seven demonstrations required in the procedures for CBC extensions to an effective date. These provisions establish that an applicant who satisfies the conditions for a CBC extension will be granted one. If this proposed action is finalized, FMC will be allowed to continue to treat, store, or dispose of these five waste streams, as currently managed in on-site surface impoundments, until May 26, 2001, without being subject to the LDRs applicable to these wastes.

DATES: To make sure we consider your comments in developing a final decision on FMC's request for a CBC extension of the LDR effective date for the subject waste streams, you must submit your comments on or before March 29, 2000.

ADDRESSES: You must send an original and two copies of your comments, referencing docket number F–2000–FMCP–FFFFF, to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, or (2) If using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should

also be identified by the docket number F–2000–FMCP–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

You may claim information that you submit in response to this notice as confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR part 2. Commenters should not submit any CBI electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, c/o Regina Magbie, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. If you submit CBI by courier/overnight express, an original and two copies of the CBI must be sent to: RCRA CBI Document Control Officer, c/o Regina Magbie, Office of Solid Waste (5305W), U.S. EPA, 2800 Crystal Drive, 7th Floor, Arlington, VA 22202. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the ''Supplementary Information'' section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information about this proposal, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this proposal, contact William Kline, Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460–0002, (703) 308–8440, [e-mail address: kline.bill@epamail.epa.gov].

SUPPLEMENTARY INFORMATION: The index of supporting materials evaluated by EPA in reaching our determination to propose approval of the requested CBC extension is available on the Internet. You will find this index at <http://www.epa.gov/epaoswer/hazwaste/ldr/index.htm>.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the location noted in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the Federal Register or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

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I. Background and Purpose of This Notice of Proposed Decision

A. Summary

FMC Corporation (FMC) has requested a one-year CBC extension of the May 26, 2000, effective date of the RCRA land disposal restrictions (LDRs) applicable to five waste streams generated at its facility (EPA Identification Number: IDD070929518) in Pocatello, Idaho— located adjacent to and largely on Shoshone-Bannock Tribes' lands, referred to as the Fort Hall Indian Reservation. These five waste streams, which are generated in the production of elemental phosphorous, are: (1) NOSAP Slurry, (2) Medusa Scrubber Blowdown, (3) Furnace Building Washdown, (4) Precipitator Slurry, and (5) Phossy Water. FMC requested the CBC extension due to the lack of available treatment capacity for these five waste streams and the need for additional time to design, construct, and begin operation of an on-site LDR Treatment Plant.

A RCRA Consent Decree (U.S. v. FMC Corporation) was entered in July 1999, to address past mishandling of these wastes and to avoid future environmental contamination. The Consent Decree requires closure of certain on-site ponds, tank system upgrades to comply with RCRA standards, implementation of SEPs to address air quality, and for FMC to design, construct, and commence operation of an LDR Treatment System by May 2002. The Tribes recently have appealed the Consent Decree, citing, among other reasons, their opposition to the continued generation and on-site disposal of these hazardous wastes.

The EPA is proposing to approve FMC's application for a one-year CBC extension of the May 26, 2000, effective date of the RCRA land disposal restrictions (LDRs). For this CBC extension to be approved, FMC must make each of the seven demonstrations required under 268.5(a), including that there is insufficient capacity to treat these wastes, that a binding contractual commitment has been made to construct the necessary treatment capacity, and that such treatment capacity, due to circumstances beyond FMC's control, cannot reasonably be made available by the effective date. If this proposed action is finalized, FMC will be allowed to continue to treat, store, or dispose of these five waste streams, as currently managed in on-site surface impoundments, until May 26, 2001, without being subject to the land disposal restrictions applicable to these wastes. FMC also may request a renewal, for up to one year, of an approved CBC extension. If warranted, EPA may grant a renewal of this extension, which, if requested and approved, would extend the effective date of the LDRs for these five waste streams to, at a maximum, May 26, 2002.

B. What Is RCRA?

The Resource Conservation and Recovery Act (RCRA) establishes a program for controlling hazardous waste from the time it is generated, through its treatment and storage, until its ultimate disposal. RCRA also establishes a program for controlling nonhazardous industrial solid waste and municipal solid waste by encouraging states to develop comprehensive plans to manage these wastes, by setting criteria for municipal solid waste landfills and other solid waste disposal facilities, and by prohibiting the open dumping of solid waste. RCRA is implemented by EPA and the states.

EPA's regulations implementing RCRA are listed in Title 40 of the Code of Federal Regulations (CFR). Within Title 40, the hazardous waste regulations are listed in parts 260 through 279. The solid waste regulations also are listed in Title 40, but in parts 240 through 258.

The specific requirements for obtaining a CBC extension of a LDR effective date, the subject of this notice of proposed decision, are found in Part 268–Land Disposal Restrictions, § 268.5(a).

C. What is the Congressional Mandate Behind the Land Disposal Restrictions (LDRs) and Extensions of the LDR Effective Date?

Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act (RCRA). These amendments imposed additional responsibilities on persons managing hazardous wastes. Among other things, HSWA required EPA to develop regulations that prohibit the land disposal of certain hazardous wastes by specified dates in order to protect human health and the environment. EPA also was required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.''

Congress recognized that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment may not always be available by the applicable statutory effective dates. As such, EPA is authorized to grant a national capacity variance from the effective date which would otherwise apply to specific hazardous wastes, based on the earliest dates that such capacity will be available but not to exceed two years. In addition, EPA is authorized to grant an additional extension of the applicable LDR deadline, on a case-by-case basis, for up to one year. Such an extension is renewable once for up to one additional year.

D. What Regulatory and Other Actions Have Led Up to the CBC Extension Requested by FMC?

On January 25, 1996 (61 FR. 2338), EPA published a supplemental proposed rule that addressed land disposal restrictions applicable, among others, to characteristic mineral processing wastes. On behalf of its elemental phosphorous plant located in Pocatello, Idaho (FMC Pocatello), FMC submitted a petition to request a two-year national capacity variance from the Phase IV LDR requirements, citing the lack of available treatment capacity in the U.S.

On June 27, 1996, EPA agreed to a motion for amendment of a 1994 consent agreement (Environmental Defense Fund, Inc. v. Browner, No. 89–0598 (D.D.C.)) that allowed EPA to establish a later date for promulgating the final Phase IV Supplemental Rule. FMC submitted supplemental comments to its petition for a national capacity variance, informing EPA that it could not design a treatment unit for its wastes until the applicable treatment standards and the wastes subject to treatment were defined.

On May 12, 1997 (62 FR 26041), EPA proposed to grant a two-year national capacity variance for three waste streams (Medusa Scrubber Blowdown, Anderson Filter Media Rinsate, and Furnace Building Washdown) generated at the Pocatello, Idaho facility. FMC submitted comments, noting that the Anderson Filter Media Rinsate now had been eliminated, using pollution prevention. However, FMC identified three additional waste streams (Precipitator Slurry, NOSAP Slurry, and Phossy Water) generated in the same elemental phosphorous production process for which treatment capacity was not available and likewise needed to be granted the proposed two-year national capacity variance.

On May 26, 1998 (63 FR 28556), EPA promulgated the Final LDR Phase IV rule and granted a two-year national capacity variance for newly identified characteristic wastes from elemental phosphorous processing, including the five waste streams generated at FMC's facility in Pocatello, Idaho. This national capacity variance extended the LDR effective date to May 26, 2000.

The United States also undertook enforcement action against FMC, an action not directly connected to the national capacity extension (or for that matter, any case-by-case extension). These actions somewhat overlapped in time the national capacity variance referred to above. In February 1997, attorneys for the United States met with and informed the Tribal governing body, the Fort Hall Business Council (representing the Shoshone-Bannock Tribes (Tribes)), on whose lands the FMC Pocatello facility is located, that the United States intended to file an action against FMC for certain violations of the RCRA statute, i.e., FMC's past mishandling of hazardous wastes. This action and subsequent negotiations led to the eventual entry of a proposed Consent Decree in October 1998, as described below. In September 1998, the United States agreed to delay the lodging of the Consent Decree so that options for penalty sharing with the Tribes could be further explored. The Tribes subsequently were offered the opportunity to become a formal party to the Consent Decree but on October 9, 1998, the Fort Hall Business Council declined to sign the Consent Decree and passed a Resolution opposing it.

On October 16, 1998, the United States lodged the proposed Consent Decree in U.S. District Court for the District of Idaho and held a public comment period on the proposed Consent Decree until December 18, 1998.

On March 29, 1999, the United States filed a Motion for Entry of the Proposed Consent Decree (United States v. FMC, Civ. No. 98–0406–E–BLW), requiring that FMC design and construct a treatment system, referred to as the LDR Treatment System, that will treat the FMC Pocatello facility's production wastes to the LDR treatment standards. Under this RCRA Consent Decree, FMC must begin operating the LDR Treatment System by May 2002. The Tribes filed a Motion to Intervene on April 23, 1999 and the District Court granted this motion on May 18, 1999. A Memorandum of Opposition for Entry of the Proposed Consent Decree subsequently was filed by the Tribes. The United States submitted a Memorandum in Support of Motion of the United States for Entry of Proposed Consent Decree, dated May 27, 1999. This reply Memorandum addressed the Tribes' concerns and expressed regret that the Tribes apparently believe their interests are not being fully protected in this matter. It is noted in the ''Reply Memorandum in Further Support of Motion of the United States for Entry of Proposed RCRA Consent Decree'', dated May 27, 1999, that FMC would need to obtain Case-by-Case extensions of the LDR effective date, per the requirements of 40 CFR 268.5, in order to allow the continued discharge of wastes to the facility's on-site surface impoundments, beyond the May 26, 2000 expiration date of the national capacity variance.

On July 13, 1999, after reviewing a Memorandum of Opposition for Entry of the Proposed Consent Decree, filed by the Tribes, and memoranda filed by the United States and FMC in response to the Tribes' Memorandum, the District Court granted the United States' motion for leave to enter as final the Consent Decree.

The Shoshone-Bannock Tribes filed Notice of Appeal on August 11, 1999 and on November 29, 1999, filed an appeal of the final RCRA Consent Decree (Appeal No. 99–35821) in the United States Court of Appeals for the Ninth Circuit.

E. What Other Actions Are Underway at FMC?

The Consent Decree is only one of several actions underway to address the environmental impact of operations at the FMC facility. Groundwater and soil contamination from FMC's old ponds are being addressed under a CERCLA Record of Decision (ROD), issued on June 8, 1998. The United States is negotiating a separate Consent Decree with FMC and the owner of another nearby facility to commit to perform the Remedial Action selected in the ROD. FMC's particulate air emissions are being addressed in the proposed Federal Implementation Plan, issued pursuant to the Clean Air Act on February 12, 1999 and scheduled to become effective by July 2000. Once finalized, there will be federally enforceable limits/control requirements applicable to FMC's particulate emissions.

F. What Demonstrations Must Be Evaluated by EPA in Reviewing a Request for a CBC Extension of the LDR Effective Date?

In order to receive approval for a CBC extension, EPA must evaluate the extent to which the FMC Pocatello has addressed the following seven demonstrations, as specified in 40 CFR 268.5:

1. Made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage the waste streams (40 CFR 268.5(a)(1).

2. Entered into a binding contractual commitment to construct or otherwise provide alternative capacity (40 CFR 268.5(a)(2).

3. Showed that due to circumstances beyond the applicant's (FMC's) control, alternative capacity cannot reasonably be made available by the applicable effective date (40 CFR 268.5(a)(3).

4. Showed that the treatment capacity to be provided will be sufficient to manage the entire quantity of the five waste streams for which the CBC extension is requested (40 CFR 268.5(a)(4).

5. Submitted a detailed schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity will be available (40 CFR 268.5(a)(5).

6. Showed that sufficient capacity has been arranged to manage the entire quantity of waste which is the subject of the application during the requested extension period, and document the location of all facilities at which the waste will be managed during the extension period (40 CFR 268.5(a)(6).

7. Showed that any surface impoundment used to manage these five wastes during the extension period meets minimum technological requirements (40 CFR 268.5 (a)(7).

II. Overview of FMC's Case-by-Case Extension Request

A. What Is FMC's Basis for Requesting a CBC Extension?

FMC has provided documentation showing that research and development efforts were initiated in 1990 to develop the technology needed to treat the Pocatello, Idaho facility's elemental phosphorous production waste streams to meet anticipated LDR standards. When EPA issued the supplemental proposal to Phase IV in January 1996, FMC requested a two-year national capacity variance for three waste streams (Medusa Scrubber Blowdown, Anderson Filter Media Rinsate, and Furnace Building Washdown) generated at the Pocatello facility to enable it to design and construct appropriate on-site pollution prevention and treatment technologies. At this time, FMC also submitted the results of an extensive nationwide survey that it conducted in an attempt to find off-site available treatment capacity. This survey indicated that no commercial TSD facility contacted was able or willing to treat the Pocatello waste streams. FMC submitted supplemental comments in August 1996, subsequent to EPA and the Environmental Defense Fund amending the 1994 consent agreement, thereby postponing the promulgation of the Phase IV Supplemental rule. In these comments, FMC informed EPA that it could not design and construct a treatment system until the final treatment standards and applicable wastes were determined.

In August 1997, FMC requested that EPA modify the national capacity variance that was proposed for the initial three waste streams, by removing AFM Rinsate, and adding three additional waste streams (Precipitator Slurry, NOSAP Slurry, and Phossy Water). Each of the five waste streams for which FMC requested a national capacity variance are generated in the elemental phosphorous production process and essentially share the same issues regarding feasibility of treatment off-site. FMC indicates that it was able to further proceed with developing appropriate treatment technology processes for these waste streams but that specific treatment technologies could only be pointedly pursued once the actual final LDR standards were promulgated by EPA in May 1998. In finalizing the Final Phase IV rule, EPA did grant a two-year national capacity variance for these five waste streams generated at the Pocatello facility, extending the LDR effective date until May 26, 2000.

FMC likewise had been engaged in RCRA Consent Decree negotiations with the United States, via the Department of Justice (DOJ) and EPA Region 10, regarding the management of its waste streams. The RCRA Consent Decree was initially filed in October 1998 to promptly address FMC's past mishandling of hazardous wastes and to avoid future environmental

contamination. FMC states that its uncertainties regarding the selection of treatment standards and approval of selected technology under the RCRA Consent Decree also were factors that delayed final selection and development of a treatment technology. The RCRA Consent Decree, proposed in October 1998 and entered as final on July 13, 1999, requires FMC to complete construction and begin operation of the LDR Treatment System by May 2002 and prohibits the discharge of untreated hazardous wastes to the facility's on-site ponds after May 26, 2002. The RCRA Consent Decree does not negate the requirement for FMC to pursue case-by-Case extension(s), as needed, to allow the continued discharge of the LDR subject wastes to on-site surface impoundments beyond the May 26, 2000 expiration date of the current national capacity variance.

Since promulgation of the final LDR standards and entry of the RCRA Consent Decree, FMC states that it was finally able to ascertain the specific treatment technology that was needed to treat the FMC Pocatello waste streams. In July 1999, FMC decided to employ the Zimpro Anoxic hydrolysis process, using caustic hydrolysis at elevated temperature and pressure, as the principal treatment for the proposed on-site LDR Treatment Plant at the Pocatello facility. However, FMC determined that it could not finalize development of the treatment technology, design the LDR Treatment Plant, obtain permits, construct the LDR Treatment Plant, and begin operating the LDR Treatment Plant within the two-year period of the current national capacity variance that expires on May 26, 2000. As such, in July 1999, FMC submitted its request to EPA for a CBC extension to further extend the LDR effective date for the subject five waste streams generated at its Pocatello, Idaho facility.

FMC's Phosphorous Chemicals Division (the current owner/operator of the FMC Pocatello, Idaho facility) and Solutia, Inc. have proposed a plan to operate a joint venture company comprising the combined phosphorous chemical businesses of FMC and Solutia. If this joint venture is approved by the Federal Trade Commission (FTC), this joint-venture company will be known as Astaris LLC. If approved, Astaris will own the Pocatello facility. However, under this joint venture, FMC would retain responsibility for funding the capital costs and implementing all RCRA Consent Decree projects, including the proposed LDR Treatment Plant. FMC's liability under the RCRA Consent Decree is not transferable. Astaris would be responsible for the construction, operation, and maintenance aspects of the LDR Treatment Plant and thus be considered the owner and operator of the Pocatello facility. This CBC extension, if approved, then would be granted to FMC/Astaris. However, as of today, for the purposes of this notice, we will continue to refer to the CBC applicant as FMC Pocatello.

B. How Does FMC's Consent Decree Impact and Correlate With the Requested CBC Extension?

The FMC Pocatello facility is located on Shoshone-Bannock Tribes' lands, referred to as the Fort Hall Indian Reservation. FMC owns over 1,000 acres on the Reservation and has conducted business at this location for the past 50 years. The resulting environmental contamination, and means of redressing it, is of obvious direct concern to the Tribes. The RCRA Consent Decree, initially filed in October 1998, was negotiated to promptly address FMC's past mishandling of hazardous wastes and to avoid future environmental contamination. On July 13, 1999, the U.S. District Court for the District of Idaho entered as final the RCRA Consent Decree (*United States* v. *FMC Corp.,* Civ. 98–0406–E–BLW). This RCRA Consent Decree mandates certain requirements regarding the management of FMC Pocatello waste streams, including site-specific treatment requirements to deactivate ignitable and reactive waste streams, and the requirement to design, construct, and commence operation of a Land Disposal Restriction Treatment System [1] (LDR Treatment System) for these waste streams by no later than May 2002. It also specifically requires closure of specified on-site surface impoundments (ponds used by FMC to manage the generated wastes), establishes a Pond Management Plan, and mandates certain plant upgrades, for example, the installation of secondary containment for sumps, tanks, and piping inside the Furnace Building and at the Phos Dock area.

Many of the demonstrations required under 40 CFR part 268 to obtain a CBC extension of the LDR effective date are indeed addressed under the terms of this RCRA Consent Decree. For example, under the RCRA Consent Decree, FMC is required to design and construct a Land Disposal Treatment System that provides sufficient capacity to manage the waste streams to satisfy LDR requirements, provide a detailed schedule for obtaining operating and construction permits, provide adequate capacity and management of the waste streams while the LDR Treatment System is being constructed, and ensure that, at a minimum, surface impoundments/landfills used to manage these waste streams, meet minimum technological requirements.

In essence, FMC's compliance with the terms of the RCRA Consent Decree likewise satisfies what needs to be documented for certain of the required demonstrations for a CBC extension. If anything, this overlap ensures consistency of both the CBC extension and RCRA Consent Decree processes. In effect, the requirements mandated under the RCRA Consent Decree will support the CBC extension that EPA is proposing to approve today and will further bolster FMC's commitment to begin operation of the LDR Treatment Plant by May 2002. In developing the RCRA Consent Decree, EPA and DOJ assumed that FMC still would need to pursue the CBC extension allowed under 40 CFR Part 268. This intent was elaborated upon on pages 10–11 in the ''Reply Memorandum in Further Support of Motion of the United States for Entry of Proposed RCRA Consent Decree,'' dated May 27, 1999.

Although the RCRA Consent Decree and CBC Extension, if approved, obviously are being used in conjunction to compel FMC to properly manage the subject waste streams, approval of a CBC extension of the LDR effective date does not alter any terms of the RCRA Consent Decree and, in actuality, would only remain effective contingent upon FMC's compliance with the terms of the RCRA Consent Decree. We also note that should FMC subsequently request a renewal of an approved extension, the LDR effective date could, at a maximum, be extended only to May 26, 2002—consistent with the RCRA Consent Decree date by which untreated hazardous wastes generated at the FMC Pocatello facility are prohibited from discharge to the facility's on-site surface impoundments (ponds).

C. Summary of the FMC CBC Application

The FMC facility, located in Pocatello, Idaho, manufactures elemental phosphorous. The elemental phosphorous is shipped to other facilities to produce phosphates and other phosphorous-based products, for use in numerous products, including

[1] The terms ''LDR Treatment System'' and ''LDR Treatment Plant'', as used in the RCRA Consent Decree and the FMC CBC extension application, respectively, are essentially referring to the same treatment unit and associated ancillary equipment, needed to be designed, constructed, and operated in order to treat the FMC Pocatello hazardous waste streams to meet the applicable LDR requirements.

processed foods, beverages, detergents, cleaners, agricultural chemicals, and water treatment chemicals. Elemental phosphorous is produced by feeding a combination of phosphate ore, coke, and silica rock into electric arc furnaces. This case-by-Case LDR extension application addresses five waste streams generated during the production of elemental phosphorous at the FMC Pocatello facility. These five waste streams are:

1. *Precipitator Slurry:* a mixture of water and dust, consisting of the suspended particulates removed from the electric arc furnace off gases by electrostatic precipitators and collected in slurry pots.

2. *NOSAP Slurry:* precipitator slurry that, when mixed with lime, meets minimum quality criteria.

3. *Phossy Water:* water that had been used in contact with the phosphorous from the point the elemental phosphorous leaves the primary condensers and is handled in various intermediate operations leading to transfer to railroad tank cars for off-site shipment.

4. *Medusa Scrubber Blowdown:* wastewater from Medusa venturi scrubbers that are used to treat smoke and fumes from furnace tapping, slag and metal runners, and the ferrophos cooling area.

5. *Furnace Building Washdown:* water collected in four sumps from numerous sources within the furnace building.

Quantity Generated and Environmental Concerns for FMC Waste Streams

Waste	Quantity generated	Concerns [2]
Precipitator Slurry	4 million gallons/year (3,000 tons/year of solids).	Due to presence of elemental phosphorous, exhibits ignitable and reactive hazardous waste characteristics.
NOSAP Slurry	21 million gallons/year (15,000 tons/year of solids).	Due to generation of phosphine gas, exhibits reactive hazardous waste characteristic.
Phossy Water	89 million gallons/year	Due to presence of elemental phosphorous, exhibits ignitable and reactive hazardous waste characteristics.
Medusa Scrubber Blowdown	55 million gallons/ year	Exhibits toxicity hazardous waste characteristic for cadmium.
Furnace Building Washdown	93 million gallons/year	Exhibits toxicity (cadmium) and reactive hazardous waste characteristics.

[2] Each of these waste streams contain varying levels of elemental phosphorous and Naturally Occurring Radioactive Material (NORM) which pose unique treatment concerns for off-site commercial TSDs.

Currently, the off-specification Precipitator Slurry, Furnace Building Washdown, and Medusa Scrubber Blowdown waste streams are piped to a holding tank, designated as Tank V3600, from which the mixture is pumped to a surface impoundment, designated as Pond 18, for clarification. Until recently, this mixture had been pumped to another surface impoundment, Pond 16S, that now is filled to capacity and scheduled for closure during the summer of 2000. Clarified water from Cell B of Pond 18 is pumped back to the production process for reuse.

The NOSAP Slurry is pumped from each of the eight slurry pots to a surge tank, designated as Tank V3700, where it is mixed with decant water from another surface impoundment, Pond 17, to increase flow and prevent settling of solids in the pipeline during transfer of the contents of Tank V3700 to Pond 17.

The Phossy Water is sent to a clarification unit to remove residual phosphorous. Clarifier overflow water is transferred to a sump for reuse in the production process. Currently, any excess water that cannot be used is pumped to Pond 18. In the future, FMC plans to first pump this excess water to a new tank, Tank V3800, from which the water then will be pumped to Pond 18. Clarifier underflow is directed to a centrifuge to remove the phosphorous from dirt and water. Water from the multistage centrifuge is directed to a sump and subsequently also pumped to Pond 18.

FMC, both in the CBC application and RCRA Consent Decree, indicates its intent to design and construct a treatment unit, referred to as the LDR Treatment Plant (System), that will treat the FMC Pocatello waste streams to meet the applicable BDAT standards. This treatment system will reduce the levels of elemental phosphorous and cyanide in the wastes such that the treated wastes do not exhibit the characteristic of reactivity for phosphine and hydrogen cyanide gas or the characteristic of ignitability. Underlying hazardous constituents, contained in the wastes, also must be maintained or fixed in a nonleachable form for stabilization treatment prior to disposal. FMC has chosen the Anoxic form of the Zimpro treatment process to achieve these goals. The LDR Treatment Plant, employing this treatment technology, will process three primary waste streams:

1. Discharge from Tank V3800 (Phossy Water),

2. Discharge from Tank V3600 in the Furnace Building (Medusa Scrubber Blowdown, Furnace Building Washdown, and Precipitator Slurry), and

3. Solids reclaimed from Pond 18 (the RCRA Consent Decree requires that solids accumulated in Pond 18 be removed and treated within five years after the LDR Treatment System commences operation).

Once the LDR Treatment Plant is operational, the NOSAP system will no longer be necessary, thereby eliminating the NOSAP Slurry waste stream. Operating the LDR Treatment Plant also will eliminate the need for the continued use of the on-site ponds. The LDR Treatment Plant is expected to be completed and functional by May 2002. At this time, FMC plans to dispose the non-hazardous stabilized treatment residual, that meets LDR and RCRA Consent Decree requirements, at a FMC silica mine located about nine miles from the FMC Pocatello facility. FMC is seeking approval from the State of Idaho to use this site as a landfill for this treatment residual.

The Shoshone-Bannock Tribes oppose the continued generation and disposal of these untreated wastes in the FMC Pocatello on-site surface impoundments. However, as discussed in Section III.A., off-site treatment capacity is not available. It is not yet feasible for FMC to treat these wastes to meet the LDRs. The necessary treatment capacity and capability only will be realized once the proposed LDR Treatment Plant is constructed and commences operation by May 2002. Also, as discussed below in Sections III.F. and III.G., the surface

impoundments into which these wastes would be placed during the CBC extension, if approved, were constructed to meet the RCRA minimum technological requirements of 40 CFR 268.5(h)(2), including liners and groundwater monitoring, and must be operated in compliance with the Pond Management Plan, as incorporated into the Consent Decree.

III. EPA's Evaluation of the Seven Demonstrations Made by FMC To Support the Requested CBC Extension

In order for EPA to approve FMC's CBC extension application, FMC must satisfy the requirements outlined in 40 CFR 268.5 and fully address each of the required seven demonstrations of 40 CFR 268.5(a)(1)–(7). EPA evaluated FMC's demonstrations, as follows:

A. § Section 268.5 (a)(1)—the applicant (FMC) has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage its waste in accordance with the LDR effective date of the applicable restriction (i.e., May 26, 2000).

In 1995, in support of its request for a national capacity variance for several of the subject waste streams, FMC surveyed 168 treatment, storage, and disposal facilities (TSDs) throughout the nation, in an effort to locate commercial treatment or disposal capacity. The results of this survey can be found in the Docket established for this notice. Not one of the surveyed facilities was able or willing to provide treatment or disposal capacity for the FMC Pocatello waste streams. TSDs cited a number of factors in declining to manage these waste streams, including the presence of elemental phosphorous, the potential for generation of phosphine gas, levels of naturally occurring radioactive materials (NORM), and the volume of wastes to be managed. Likewise, EPA was not aware of any available capacity for these waste streams. As such, EPA granted a national capacity variance for the FMC Pocatello waste streams, extending the LDR effective date for these waste streams to May 26, 2000. See 63 FR 28556, May 26, 1998.

In support of its request for this case-by-Case extension of the LDR effective date, FMC performed another survey in February—May 1999 that supplemented the initial 1995 survey of available commercial treatment capacity. This supplemental survey was designed to focus on those facilities likely to have developed additional or new capacity since the 1995 survey. A list of 33 facilities were contacted by FMC. Again, not one of these TSD facilities was able or willing to treat the FMC Pocatello waste streams. Many of the same reasons given by TSDs in the original survey for not being able to treat these waste streams were again cited in the supplemental survey. Results of this supplemental survey likewise can be found in the Docket.

We believe that FMC has made reasonable efforts, over the past four years, to try to locate adequate, alternative treatment capacity for the off-site management of the waste streams for which it is requesting a CBC extension of the LDR effective date. Likewise, we are not aware of any available commercial treatment capacity for these wastes. As such, EPA concludes that FMC has adequately fulfilled the requirements of this § 268.5(a)(1) demonstration.

B. § Section 268.5(a)(2)—the applicant (FMC) has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery, or disposal capacity that meets the treatment standards specified in 40 CFR Part 268, subpart D or, where treatment standards have not been specified, such treatment, recovery, or disposal capacity is protective of human health and the environment.

FMC has committed considerable resources toward the development of a treatment technology necessary to treat the subject Pocatello waste streams to meet BDAT standards. The appropriate treatment technology/process now has been identified and FMC is proceeding with plans to construct the LDR Treatment Plant, incorporating the Zimpro anoxic hydrolysis process as the principal treatment technology in the treatment system. On June 24, 1999, FMC entered into a contract with Raytheon Engineers and Constructors to design, engineer, and construct the LDR Treatment Plant. A copy of this contract has been provided to EPA as Confidential Business Information (CBI). To further support its demonstration of a binding contractual commitment to construct the LDR Treatment Plant, FMC also has provided EPA with the following documentation:

- Corporate approval of funds to purchase and construct the proposed LDR Treatment Plant at the Pocatello, Idaho facility to treat the wastes to BDAT standards.
- Documentation of Supplemental Authorization for Expenditures by FMC, dedicating a total, thus far, of $15.1 million toward the LDR Treatment System (process design and engineering, development of Part A and interim status applications, analytical efforts, etc.).
- Purchase Orders for equipment.
- Contracts with vendors for supplies and services.

In addition to this documentation of contractual commitment, the RCRA Consent Decree places an additional binding legal commitment on FMC to construct the LDR Treatment System. Under the RCRA Consent Decree, FMC is compelled to design, construct, and permit the proposed LDR Treatment System by May 2002. If FMC fails to meet the stipulations of this RCRA Consent Decree, it will be subject to significant monetary penalties.

We believe, as evidenced by the resources committed by FMC toward the design and construction of the LDR Treatment Plant, that it is fully committed to and aggressively pursuing construction of the necessary on-site treatment capacity to treat the subject waste streams generated at the Pocatello, Idaho facility to BDAT standards. EPA believes FMC has provided the necessary documentation to demonstrate its binding contractual commitment to provide the necessary treatment capacity.

C. § Section 268.5(a)(3)—Due to circumstances beyond the applicant's (FMC's) control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date.

The unique nature of the waste streams, for which the CBC extension is being requested by FMC, pose numerous treatment problems. The non-availability of commercial treatment capacity attests to the unique nature of these waste streams. FMC has been grappling with these problems for quite some time and has provided documentation that details its efforts—involving literature searches, laboratory testing, process design, permitting, pilot plant studies and operations, etc. in attempting to determine the most appropriate treatment technology. FMC states that it has evaluated more than 50 potential waste treatment technologies. However, prior to selecting the most appropriate treatment technology and developing the construction plans, FMC needed to know the final Phase IV LDR treatment standards for these waste streams, promulgated on May 26, 1998, and the requirements of the proposed RCRA Consent Decree which was lodged with the Court on October 16, 1998. Upon learning these requirements, FMC made an intensive effort to determine the treatment technology most appropriate to treat the FMC Pocatello waste streams to meet the LDR requirements. In August 1999, FMC finally chose the Zimpro Anoxic treatment process as the treatment technology to be employed in the proposed LDR Treatment Plant.

The two-year national capacity variance that was approved for these waste streams in the final Phase IV rulemaking will expire on May 26, 2000. Now that a treatment technology has been chosen, the design, construction, and permitting of the proposed LDR Treatment Plant has commenced. The mandate of the RCRA Consent Decree that FMC begin operation of the LDR Treatment System by May 2002 is already ambitious. However, it is virtually impossible for FMC to construct the LDR Treatment Plant needed to provide the treatment capacity and to be operating by May 26, 2000.

Based on the above, we believe that FMC has made a good-faith and reasonable effort in its attempt to provide treatment capacity by the effective date. FMC has aggressively pursued the development of technology capable of treating their wastes to BDAT standards. We believe FMC has acted in good faith to provide the necessary treatment capacity but that such capacity could not reasonably be made available by May 26, 2000, the current effective date of the land disposal restriction for these waste streams. EPA believes the lack of treatment capacity for these waste streams is due to circumstances beyond the control of FMC. As such, FMC has adequately met the demonstration of § 268.5(a)(3).

D. Section 268.5 (a)(4)—The capacity being constructed or otherwise provided by the applicant (FMC) will be sufficient to manage the entire quantity of waste that is the subject of the application.

FMC, in its CBC application, states that the LDR Treatment Plant to be constructed will have sufficient capacity to adequately treat the waste streams generated by the Pocatello, Idaho facility. The RCRA Consent Decree likewise makes this a requirement. The treatment train to be provided by FMC uses a combination of lime treatment, anoxic hydrolysis, metals precipitation, filtration, and stabilization. FMC has provided test results that demonstrate that the treatment system will meet the LDR treatment standards as well as the requirements specified in the RCRA Consent Decree. This treatment system is designed to destroy elemental phosphorous and cyanide in the subject waste streams and remove the hazardous characteristics from these waste streams. FMC has submitted information, designated as CBI, regarding the process design flow and operating conditions of the proposed LDR Treatment System. As such, the planned LDR Treatment Plant is expected to have sufficient treatment capacity. Included in the capacity calculations are the estimated 39 acre-feet of accumulated solids in Pond 18 that is required per the RCRA Consent Decree to be removed and treated in the LDR Treatment System within five years of commencing operation. Using historic and predicted elemental phosphorous production and waste generation data and taking into consideration design requirements mandated in the RCRA Consent Decree, FMC states that it has designed the proposed LDR Treatment Plant to manage 610 gallons per minute of waste, thus providing adequate treatment capacity, including reasonable unexpected increases in waste generation flow rates. FMC anticipates a significant reduction of the quantity of wastes it generates and thus needs to treat in the proposed LDR Treatment Plant. For one thing, FMC anticipates, as part of the proposed joint venture with Solutia, Inc., that the construction of a new raw material supply plant, that produces purified phosphoric acid, potentially will serve as a substitute for some of the elemental phosphorous currently generated at Pocatello. FMC states that this plant should be operational within two to three years. Also, the joint venture's intention to develop additional wet phosphoric acid capacity is expected to reduce the need for elemental phosphorous and thus reduce the quantity of the subject waste streams generated. FMC also describes several ongoing waste minimization projects, including the control of the quantity of fine feed material to the electric arc furnaces and upgrades to operations at the Phos Dock. FMC anticipates that these efforts further will reduce the quantity of wastes, especially solids, needed to be treated in the LDR Treatment Plant. Both the current and anticipated generation rates for the subject waste streams are adequately covered by the design size of the proposed LDR Treatment Plant. The following table shows the current and anticipated generation rates for the waste streams to be treated in the LDR Treatment Plant.

In initial comments on the draft notice, the Tribes questioned whether FMC is constructing alternative treatment capacity sufficient to treat the volume of wastes which are to be removed from Pond 18 (Letter of February 25, 2000). EPA will investigate this issue further. EPA notes that the Consent Decree requires the on-site LDR Treatment System be designed with the capacity necessary to treat all of the phossy wastes, including all sediment collected in Pond 18. More specifically, as previously mentioned above, the Consent Decree mandates that FMC remove and treat all of the Pond 18 sediment within five (5) years after the LDR Treatement System begins operation.

CURRENT AND ANTICIPATED QUANTITIES OF WASTE STREAMS FOR TREATMENT

Waste stream	Current waste generation rate	Expected waste generation rate [3]
Precipitator Slurry	55 gallons per minute	28 gallons per minute.
Phossy Water (from Tank V3800)	200 gallons per minute	180 gallons per minute.
Medusa Scrubber Blowdown and Furnace Building Washdown (from Tank V3600).	300 gallons per minute	250 gallons per minute.
Pond 18 Excavated Solids [4]	Not Applicable	18 gallons per minute.
Total	555 gallons per minute	476 gallons per minute.

[3] Based on projections of reduced production of elemental phosphorous.
[4] Per the RCRA Consent Decree, the Pond 18 excavated solids must be treated in the LDR Treatment System within five years of commencement of operation of the LDR Treatment System.

EPA believes that FMC has adequately demonstrated that the LDR Treatment Plant to be constructed will provide the necessary treatment capacity to ensure that the entire quantity of these waste streams, for which FMC is requesting a CBC extension, and will meet applicable BDAT standards. The proposed LDR Treatment Plant is projected to generate approximately 242 cubic yards/day of non-hazardous stabilized treatment residual. FMC plans to transport this treatment residual in 20 cubic yard roll-off containers for disposal at the FMC silica mine, an off-site facility, located

nine miles from the FMC Pocatello Plant. This proposed landfill currently has an existing capacity of 260 acre feet and is expected to provide disposal capacity for about 5 years. FMC is evaluating several options to manage the treatment residuals generated beyond that time, including expanding the proposed landfill or using other landfill sites. FMC currently is preparing the application to be submitted to the State of Idaho for approval of this site as a landfill.

E. § Section 268.5 (a)(5)'' the applicant (FMC) provides a detailed schedule for obtaining operating and construction permits or an outline of how and when alternative capacity will be available.

FMC has provided EPA with a detailed schedule for the design, construction, and permitting of the LDR Treatment Plant to be constructed at its Pocatello, Idaho facility. This schedule, in effect, reflects the requirements for bringing the LDR Treatment System on-line under the Consent Decree. The Table below shows some of the key milestones and dates in the schedule. FMC anticipates actual physical on-site construction to begin in July 2000 and start-up and operation of the LDR Treatment Plant by May 2002.

Key Milestones and Dates in FMC's Schedule for The LDR Treatment Plant

Milestone	Scheduled date of completion
Design and Engineering	January 2001.
RCRA Permitting (Submittal)	Part A—November 1999; Interim Status—March 2000. Part B—March 2001.
Equipment Procurement	June 2000 through July 2001.
Physical On-Site Construction	July 2000 through April 2002.
Start-up/Commence Operation	May 2002.

We believe that FMC has provided the necessary design, construction and permitting milestones for bringing the LDR Treatment Plant on-line and therefore providing the treatment capacity needed to treat the subject waste streams to BDAT standards. However, the CBC extension that EPA is proposing to approve today would only extend the LDR effective date until May 26, 2001. Even this extension apparently will not provide sufficient time for FMC to bring the LDR Treatment Plant into operation. FMC likely will need to request a renewal of any approved CBC extension to provide additional time to complete construction and commence operation of the LDR Treatment Plant. However, any such renewal cannot extend the LDR effective date beyond May 26, 2002.

F. § Section 268.5(a)(6)—the applicant (FMC) has arranged for adequate capacity to manage its waste during an extension, and has documented the location of all sites at which the waste will be managed.

FMC would continue to manage these waste streams in two of its on-site surface impoundments, referred to as Ponds 17 and 18, that it has been using for this purpose. FMC has provided data showing that these surface impoundments would have the necessary capacity available to manage these wastes during the extension, if approved. As of November 1, 1999, FMC estimated that Pond 17 has approximately 58 acre feet of capacity remaining. Pond 17 only is used to manage NOSAP Slurry, which is estimated to accumulate solids at a rate of almost 20 acre feet per year. FMC, however, views this accumulation rate as an upper bound and anticipates that waste minimization efforts and a reduced production mode will reduce the quantity of solids going to Pond 17. Thus, Pond 17, even at the current rate of inflow NOSAP Slurry, would have enough capacity for another three years. Once the LDR Treatment Plant is operating, Pond 17 will no longer be needed and will be closed. As of November 1, 1999, FMC indicated that Pond 18, composed of Cells A and B, has approximately 127 acre-feet of remaining capacity. The bulk of the solids are contained in Cell A, with a capacity of 40 acre-feet. FMC states that solids accumulate in Pond 18 at the rate of about 12.6 acre-feet per year. At this rate of solids accumulation and assuming that most of the solids precipitate out of the water while in Cell A, Pond 18 also would have sufficient capacity for another three years. Once the LDR Treatment Plant is operating, Pond 18 will no longer be needed. The RCRA Consent Decree requires that the solids accumulated in Pond 18 be treated in the LDR Treatment System within five years of commencement of plant operation.

To provide even more assurance of adequate capacity and proper management of these surface impoundments (ponds), FMC is adhering to the Pond Management Plan, as required by the RCRA Consent Decree. Among other requirements, the Pond Management Plan requires that pond levels be maintained within defined minimum and maximum levels.

EPA believes that FMC has provided the documentation necessary to satisfy the demonstration under § 268.5(a)(6).

G. § Section 268.5 (a)(7)—Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of 40 CFR 268.5(h)(2).

During the extension period, if approved, the subject waste streams would be piped directly to the on-site surface impoundments, i.e., Ponds 17 and 18, as described above. Both of these surface impoundments were constructed to meet the RCRA minimum technological requirements of 40 CFR 268.5(h)(2). Pond 17 has double liners, a leak detection system, and is equipped with one upgradient and three downgradient groundwater monitoring wells. Pond 18 (both Cells A and B) are lined with a double composite geosynthetic/soil liner and a leak detection system. Each liner consists of a flexible membrane overlying a low permeability soil layer. The soil component of the primary liner is a geosynthetic clay liner; the soil component of the secondary liner is compacted bentonite amended soil. A sacrificial 80-mil high-density polyethylene liner covered with one foot of bentonite soil overlays the liner system—constructed to allow sediment removal once the LDR Treatment System is operational. Pond 18 has a groundwater monitoring system composed of two upgradient and four downgradient monitoring wells.

As previously mentioned, the RCRA Consent Decree, incorporating the Pond Management Plan, requires these ponds to meet the minimum technology requirements (MTRs). The Pond Management Plan also imposes stringent operating conditions on the use and management of the FMC Pocatello ponds. These conditions include:

- Pond 18 must have an electronic leak detection system and a sacrificial liner to allow for sediment removal once the LDR Treatment System is operational.
- Human exposure to phosphine and hydrogen cyanide must be minimized at the ponds by installing additional fencing and continuous gas monitors.
- Fires must be prevented by managing pond water levels, using electronic level monitoring and alarm devices.
- Wildlife injuries or fatalities must be prevented at the ponds by installing netting and/or bird balls over pond surfaces to deter avian intrusion.

However, the Shoshone-Bannock Tribes oppose the continued disposal of these untreated wastes in the FMC Pocatello on-site surface impoundments. In initial comments on the draft notice, the Tribes questioned whether the FMC's surface impoundments (Ponds 17 and 18), that would be used to manage the wastes during the requested extension, were capable of meeting the requirements of 268.5 (h)(2). These standards require compliance with the so-called minimum technology requirements of double liners and a leachate collection system. EPA's review of all available information indicates that the impoundments satisfy the minimum technology requirements.

The Tribes further questioned whether the impoundments met other substantive design and operating standards, particularly those relating to air emissions. EPA notes that compliance with air emission standards is not directly relevant to this case-by-case extension (section 3005 (j)(11) of the statute and the codifying regulations in 268.5 (h)(2) refer only to the minimum technology requirements). The regulations in 40 CFR Parts 264 and 265 subpart CC, relate to air emissions from certain hazardous waste surface impoundments. EPA's review of all available information indicates that these provisions do not apply to the FMC impoundments in question because only certain types of volatile organic wastes are subject to the rules (40 CFR 265.1083 (c)(1)), and we do not believe volatile organic wastes are present in these impoundments.

EPA believes that FMC has provided the documentation necessary to satisfy the demonstration under § 268.5(a)(7), but we will of course review any new information received during the comment period to ensure that all conditions are satisfied.

IV. Consultation With Affected State and Indian Tribes

In accordance with 40 CFR 268.5(e), EPA consulted with the State of Idaho—Idaho Division of Environmental Quality (IDEQ) to determine if the State had any permitting, enforcement, or other concerns regarding this respective facility that EPA should take into consideration in deciding to grant or deny FMC's application for a CBC extension of the LDR effective date. The State of Idaho has indicated its support for the approval of the CBC extension requested by FMC.

The majority of the FMC Pocatello site, including most of the processing areas, is located on the Fort Hall Indian Reservation. Consistent with the Presidential Memorandum of April 29, 1994, EPA has engaged in advance consultation of this proposed CBC extension with representatives of the Tribes and also sent a copy of this Notice to the Tribes in advance of the public comment period in order to further provide opportunities for comment. It is EPA's understanding that the Tribes do not wish for the FMC facility to close, and support the overall federal and company efforts to remediate groundwater and soil contamination caused by historic facility operations, and to better control particulate air emissions from the facility. However, the Tribes continue to believe that FMC's hazardous waste should be treated now before being land disposed, and consequently oppose granting a CBC extension of the land disposal prohibition and pretreatment requirement. EPA will continue to consult with the Tribes prior to finalizing any decision on the capacity extension.

V. What Is EPA's Proposed Action?

We believe that FMC has made and is continuing to make a good-faith effort toward providing sufficient and appropriate treatment capacity for the five waste streams that are the subject of its request for a CBC extension of the LDR effective date. The United States recognizes and concurs that it does owe an important trust responsibility to the Tribes, on whose lands the FMC Pocatello facility is located, including a responsibility to perform its obligations under RCRA and other statutes intended to protect the environment. We also recognize the Tribes's legitimate concerns regarding the continued placement of untreated hazardous wastes in the FMC Pocatello on-site surface impoundments. However, as well as considering tribal concerns and recommendations, the United States must also consider other relevant facts when choosing a course of action. EPA notes that the controlling law here is section 3004 (h) (3) of the statute and the rules in 268.5 which implement that provision. These provisions establish that an applicant who satisfies the rigorous conditions for a CBC extension will be granted one. The ultimate and controlling issue in processing FMC's application consequently is whether the company has satisfied the statutory and regulatory conditions.

We see no reasonable and quick way of achieving the goal of the Tribes, *i.e.,* the immediate cessation of on-site disposal of these wastes. As explained earlier in this Notice, we believe that it is not yet feasible for FMC to treat these wastes prior to placement in the on-site surface impoundments, and no other company is willing to accept the wastes for off-site treatment. Treatment capacity and capability only will be available once FMC constructs and commences operation of the proposed LDR Treatment Plant. Short of the FMC facility shutting down—which the Tribes do not want to happen—we believe that the Tribes's concerns about continued on-site disposal can most practically and judiciously be addressed by compelling FMC to expeditiously proceed with the construction of the proposed treatment plant so as to have it operational at the earliest possible date. We believe FMC is on such a schedule.

As such, EPA is proposing to grant an extension of the land disposal restrictions effective date for these wastes, until May 26, 2001. If this extension is finalized, FMC may continue to manage these five waste streams in the on-site surface impoundments (Ponds 17 and 18) at the Pocatello, Idaho facility until May 26, 2001. FMC likely will need to request a renewal of any approved CBC extension to provide additional time to complete construction and commence operation of the LDR Treatment Plant and may request renewal of the one-year extension, if approved. For a renewal of the extension, FMC would need to re-demonstrate each of the seven required demonstrations in § 268.5(a). However, any such renewal cannot extend the LDR effective date beyond May 26, 2002.

Once FMC is granted a one-year CBC extension, it must immediately notify EPA of any change in the demonstrations made in its initial application (40 CFR 268.5(f)). The approval of this one-year CBC extension, and any potential extension renewal, is conditional on FMC adhering to its stated schedule for the construction and operation of the LDR treatment plant. EPA will maintain close oversight of the scheduled progress being made by FMC towards this goal by requiring progress reports. FMC would need to submit progress

reports that describe the progress being made toward constructing and bringing the LDR Treatment Plant into operation. EPA proposes that FMC submit a monthly progress report and that the first progress report be due thirty (30) days after the date of final approval of the requested CBC extension. The progress reports also must identify any delay or possible delay in providing the planned treatment capacity and describe the mitigating actions being taken in response to any such delay (40 CFR 268.5(g)). Likewise, FMC is bound by the terms of the RCRA Consent Decree to have this treatment plant operational by May 2002. If FMC should fail to adhere to this schedule, such that compliance with the requirements of the Consent Decree is jeopardized, EPA has the authority to terminate an approved CBC extension.

VI. How Can I Influence EPA's Thinking on This Notice?

We welcome your comments on the factual issues associated with each of the seven demonstrations made by FMC to support the requested CBC extension and EPA's evaluation of these demonstrations. In addition we would like your comments on the appropriateness of the proposed one-year extension of the LDR effective date for the five waste streams generated at the FMC Pocatello facility for which the CBC extension is requested. We are not requesting comments on the RCRA Consent Decree or regarding other ongoing or planned regulatory/enforcement activities at the FMC Pocatello facility.

Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the notice, such as the units or page numbers.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

VII. What Happens After We Receive Your Comments?

After reviewing comments received, we will issue a final rulemaking to either approve or deny FMC's request for a one-year CBC extension of the LDR effective date. We plan to publish a final notice regarding the Agency's decision on FMC's request for a one-year CBC extension, prior to the May 26, 2000, expiration date of the current national capacity variance for the subject waste streams. The extension, if approved, would remain in effect unless the facility fails to make a good-faith effort to meet the schedule for completion, the Agency denies or revokes any required permit, conditions certified in the application change, the requirements of the RCRA Consent Decree are not met, or the facility violates any law or regulations implemented by EPA.

VIII. Administrative Requirements

A. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

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

Today's notice will significantly or uniquely affect the communities of Indian tribal governments, but it will not impose substantial direct compliance costs on such communities. EPA is proposing to approve an application for a one-year CBC extension of the May 26, 2000, effective date of the RCRA land disposal restrictions for a facility located on Tribal Lands. This action will significantly or uniquely affect the communities of Indian tribal governments by permitting the facility to continue to treat, store, or dispose of five waste streams as currently managed in on-site surface impoundments until May 26, 2001. These impoundments are located on Tribal Lands. However, this action will not impose any direct compliance costs on the communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this notice.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This notice does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with the State of Idaho in developing this rule, as discussed in section IV. of this notice.

Authority: Sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924).

Dated: March 2, 2000.

Michael Shapiro,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–5604 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6548–9]

Environmental Laboratory Advisory Board, Meeting Dates and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App 2) notification is hereby given of an open meeting of the Environmental Laboratory Advisory Board (ELAB).

DATES: The meeting will be held on April 11, 2000, from 1:00 p.m. to 4:00 p.m. (EST).

ADDRESSES: While the meeting will be conducted by teleconference, the public is invited to participate by joining David Friedman in EPA Conference Room 2 on the fourth floor of the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW.

SUPPLEMENTARY INFORMATION: Among the items the Board will discuss are updates from its subcommittees, shipment of environmental samples, and any public comments the Board has received since their February 2000 meeting.

The meeting is open to the public and time will be allotted for public comment. Written comments are encouraged and should be directed to David Friedman; USEPA; 1200 Pennsylvania Avenue, NW, (8101R); Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Friedman; Designated Fedeal Officer; USEPA; 1200 Pennsylvania Avenue, NW, (8101R); Washington, DC 20460. If questions arise, please contact Mr. Friedman by phone at (202) 564–6662, by facsimile at (202) 565–2432 or by email at friedman.david@epa.gov.

Dated: February 29, 2000.

Henry L. Longest II,

Deputy Assistant Administrator for Management, Office of Research and Development.

[FR Doc. 00–5623 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–918; FRL–6491–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–918, must be received on or before April 7, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–918 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Product Manager (21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–918. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–918 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services

Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3.*Electronically.* You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov,''* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–918. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 21, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

American Cyanamid Company

8F4946

EPA has received a pesticide petition (8F4946) from American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on the imported raw agricultural commodities (RAC) of dried hops cones at 45 parts per million (ppm); and on the RAC of tomato fruit at 0.50 ppm and in or on the processed commodities of tomato puree at 0.50 ppm and tomato paste at 1.50 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* American Cyanamid believes that the nature of the residues in hops and tomatoes is considered to be understood. This belief is based upon the results of the metabolism studies conducted on potato, grape, and lettuce. The results of the potato metabolism study show only negligible residues in tubers, 0.01–0.02 ppm total radioactive residues (TRR). This is in contrast to the aerial portions of the plant which were found to have up to 23.5 ppm TRR, thus demonstrating that translocation of dimethomorph within the plant was not significant. Almost all of the radioactive residue (97.8%) was extractable from the plant at harvest. In the aerial portion of the plant, approximately 70% of the TRR was identified as dimethomorph. No metabolites were identified that require regulation.

The results of the grape metabolism study showed that the TRR in/on grapes harvested 35 days following the last of four applications 0.8 lb active ingredient per acre (ai/acre) per application for four consecutive weeks for a total rate of 3.2 lb ai/acre (3x the proposed maximum seasonal rate) was 14.6 ppm. Unmetabolized dimethomorph accounted for 87.3% of the TRR (12.7 ppm). No metabolites were identified that require regulation.

The results of the lettuce metabolism study showed that the TRR in/on lettuce leaves harvested 4 days following the last of four applications approximately 1.0 lb ai/acre per application with a 9 to 11–day spray interval, for a total rate of 4.1 lb ai/acre, was 102 ppm. Of this total residue, 98.5% was extractable and unmetabolized dimethomorph accounted for greater than 93% of the extractable TRR. No metabolites were identified that require regulation.

2. *Analytical method.* A reliable method for the determination of dimethomorph residues in hops and

tomatoes exists; this method is the FDA Multi-Residue Method, Protocol D, as published in the Pesticide Analytical Manual I.

3. *Magnitude of residues*. The residue data for hops submitted to support this tolerance petition were taken from studies conducted in Germany. Dimethomorph residues observed in dried hops cones collected from these field studies ranged from 4.3 ppm to 42.0 ppm. These trials were conducted using four applications of dimethomorph with a maximum seasonal rate of 1.82 lb ai/acre. Therefore, a tolerance of 45.0 ppm is appropriate.

The residue data for tomatoes submitted to support this tolerance petition were collected from 16 studies conducted in tomato-producing regions of the United States. Trials were conducted using multiple applications (6–7) of dimethomorph with a maximum seasonal rate of up to 1.4 lb ai/acre (1.4x the proposed label rate). Dimethomorph residues observed in these field trials ranged from < 0.05 ppm to 0.55 ppm immediately after harvest. In a study on the magnitude of residue in tomato processed commodities, residues of dimethomorph did not concentrate in any fraction except in paste (3x). Therefore, tolerances of 0.50 ppm in/on tomato fruit, 0.50 ppm in/on tomato puree, and 1.50 ppm in/on tomato paste are proposed.

B. Toxicological Profile

1. *Acute toxicity*—i. An acute oral toxicity study in the Sprague-Dawley rat for dimethomorph technical with a LD_{50} of 4,300 milligrams/kilograms body weight (mg/kg bwt) for males and 3,500 mg/kg bwt for females. Based upon EPA toxicity criteria, the acute oral toxicity category for dimethomorph technical is Category III or slightly toxic.

ii. Oral LD_{50} studies were conducted on the two isomers (E and Z) alone:

a. An acute oral toxicity study in the Wistar rat for the E-isomer with a LD_{50} greater than 5,000 mg/kg bwt for males and approximately 5,000 mg/kg bwt for females.

b. An acute oral toxicity study in the Wistar rat for the Z-isomer with a LD_{50} greater than 5,000 mg/kg bwt for both males and females.

iii. An acute dermal toxicity study in the Wistar rat for dimethomorph technical with dermal LD_{50} greater than 5,000 mg/kg bwt for both males and females. Based on the EPA toxicity category criteria, the acute dermal toxicity category for dimethomorph is Category IV or relatively non-toxic.

iv. A 4–hour inhalation study in Wistar rats for dimethomorph technical with a LC_{50} greater than 4.2 milligrams/liter (mg/L) for both males and females. Based on the EPA toxicity category criteria, the acute inhalation toxicity category for dimethomorph technical is Category IV or relatively non-toxic.

2. *Genotoxicity*—i. *Salmonella* reverse gene mutation assays (2 studies) were negative up to a limit dose of 5,000 µg/plate. Chinese hamster (CH) lung V79 cells were negative up to toxic doses in two studies.

ii. Two CH lung structural chromosomal studies were reportedly positive for chromosomal aberrations at the highest dose tested (HDT) (160 (µg/mL)-S9; 170 µg/mL/+S9). Dimethomorph induced only a weak response in increasing chromosome aberrations in this test system. These results were not confirmed in two micronucleus tests under *in vivo* conditions.

iii. Structural chromosomal aberration studies were weakly positive in human lymphocytic cultures, but only in S9 activated cultures treated at 422 µg/mL HDT, which was strongly cytotoxic. No increase in chromosomal aberrations was observed in the absence of S9 activation at all doses. Furthermore, the positive clastogenic response observed under the *in vitro* conditions was not confirmed in two *in vivo* micronucleus assays.

iv. Micronucleus assay (two studies) indicated that dimethomorph was negative for inducing micronuclei in bone marrow cells of mice following i.p. administration of doses up to 200 mg/kg or oral doses up to the limit dose of 5,000 mg/kg. Thus, dimethomorph was found to be negative in these studies for causing cytogenic damage *in vivo*.

v. Dimethomorph was negative for inducing unscheduled DNA synthesis (UDS), in cultured rat liver cells, at doses up to 250 µg/mL, a weakly cytotoxic level.

vi. Dimethomorph was negative for transformation in Syrian hamster embryo cells treated, in the presence and absence of activation, up to cytotoxic concentrations (265 µg/ml/+S9; 50 µg/ml/-S9).

3. *Reproductive and developmental toxicity*—i. A rat developmental toxicity study with a lowest observed adverse effect level (LOAEL) for maternal toxicity of 160 mg/kg/day and a no observed adverse effect level (NOAEL) for maternal toxicity of 60 mg/kg/day. The NOAEL for developmental toxicity is 60 mg/kg/day. Dimethomorph is not teratogenic in the Sprague-Dawley rat.

ii. A rabbit developmental toxicity study with a LOAEL for maternal toxicity of 650 mg/kg/day and a NOAEL for maternal toxicity of 300 mg/kg/day. The NOAEL for developmental toxicity is 650 mg/kg/day HDT. Dimethomorph is not teratogenic in the New Zealand white rabbit.

iii. A 2–generation rat reproduction study with a LOAEL for parental systemic toxicity of 1,000 ppm (80 mg/kg/day) and a NOAEL for parental systemic toxicity of 300 ppm (24 mg/kg/day). The NOAEL for fertility and reproductive function was 1,000 ppm (80 mg/kg bwt/day) HDT.

4. *Subchronic toxicity*—i. A 90–day dietary study in Sprague-Dawley rats with a NOAEL of greater than or equal to 1,000 ppm HDT (73 mg/kg/day) for males and 82 mg/kg/day for females.

ii. A 90–day dog dietary study with a NOAEL 450 ppm (15 mg/kg/day) and a LOAEL 1,350 ppm (43 mg/kg/day).

5. *Chronic toxicity*—i. A 2–year chronic toxicity study in Sprague-Dawley rats with a NOAEL of 200 ppm (9 mg/kg/day for males and 12 mg/kg/day for females). The LOAEL for systemic toxicity is 750 ppm (36 mg/kg/day for males and 58 mg/kg/day for females).

ii. A 1 year chronic toxicity study in dogs with a NOAEL of 450 ppm (14.7 mg/kg/day) and a LOAEL of 1,350 ppm (44.6 mg/kg/day).

iii. A 2–year oncogenicity study in Sprague-Dawley rats with a NOAEL for systemic toxicity of 200 ppm (9 mg/kg/day for males and 11 mg/kg/day for females). The LOAEL for systemic toxicity was 750 ppm (34 mg/kg/day for males and 46 mg/kg/day for females). There was no evidence of increased incidence of neoplastic lesions in treated animals. The NOAEL for oncogenicity is 2,000 ppm (95 mg/kg/day for males and 132 mg/kg/day for females) HDT.

iv. A 2–year oncogenicity study in mice with a NOAEL for systemic toxicity of 100 mg/kg/day and a LOAEL of 1,000 mg/kg/day. There was no evidence of increased incidence of neoplastic lesions in treated animals. The NOAEL for oncogenicity is 1,000 mg/kg/day HDT.

6. *Animal metabolism*. Results from the livestock and rat metabolism studies show that orally administered dimethomorph was rapidly excreted by the animals. The principal route of elimination is the feces.

7. *Metabolite toxicology*. There were no metabolites identified in plant or animal commodities which require regulation.

8. *Endocrine disruption*. Collective organ weights and histopathological findings from the 2–generation reproduction study in rats, as well as

from the subchronic and chronic toxicity studies in two or more animal species, demonstrate no apparent estrogenic effects or effects on the endocrine system. There is no information available which suggests that dimethomorph technical would be associated with endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. For purposes of assessing the potential dietary exposure, a Theoretical Maximum Residue Contribution (TMRC) has been calculated from the tolerance of dimethomorph technical in or on hops at 45 ppm, whole tomatoes at 0.50 ppm, tomato puree at 0.50 ppm, and tomato paste (including tomato juice and catsup) at 1.50 ppm. This exposure assessment is based on very conservative assumptions, namely, 100% of all hops and tomato commodities consumed is treated with dimethomorph technical and that the residues of dimethomorph technical in hops and tomato commodities are equal to the tolerance. Although there are no other established United States permanent tolerances for dimethomorph technical, petitions for a permanent tolerance of 0.05 ppm in or on potatoes and for a time-limited tolerance of 2.0 ppm in or on imported grapes are pending at the Agency. Therefore, the dietary exposures to residues of dimethomorph technical in or on food will be limited to residues in hops, tomatoes, potatoes and grapes. For the overall population, the contribution of the tolerances for hops and tomato commodities to daily consumption uses only 0.05% and 0.58%, respectively, of the Reference Dose (RfD). The combined contributions of the hops, tomato and pending potato and grapes tolerances to the daily consumption uses only 1.58% of the RfD for the overall U.S. population, less than 5% for infants and non-nursing infants (2.38% and 2.60%, respectively) and less than 5% for children ages 1–6 and 7–12 (4.39% and 1.81%, respectively). Therefore, American Cyanamid concludes that the chronic dietary exposure to dimethomorph from all current and pending tolerances is less than 10% of the PAD for the U.S. population and for population subgroups (e.g., for children 1–6 years, 4.3% plus 4.39%).

ii. *Drinking water*. Currently, the only federally-registered food/feed use of dimethomorph in the United States is on potato crops. For this use, the Drinking Water Level of Concern from chronic exposure was estimated by the EPA to be 3,400 parts per billion (ppb) for the U.S. population and for males 13 years and older, 2,900 ppb for females 13 years and older, and 960 ppb for children (1–6 years). These levels are all much greater than that calculated from the Generic Estimated Environmental Concentration (GENEEC); 24 ppb for 56–days which simulates the residues in surface water. Dimethomorph residues in ground water were also estimated using the Screening Concentration in Ground Water Model (SCI–GRO), but these estimates were significantly lower than those obtained from the GENEEC model. Given the low levels of dimethomorph residues as estimated by the GENEEC model, the large margin of exposure (40x–142x), and the similarity in use pattern on potato and tomato, the additional use of dimethomorph on tomatoes is not expected to reach a level of concern for residues in drinking water. Potential exposure in drinking water in the U.S. for the proposed tolerance on imported hops is not relevant to this petition.

2. *Non-dietary exposure*. The proposed tolerances are for imported hops and, there are no residential uses for dimethomorph in the United States; therefore, non-dietary exposure in the United States is not relevant to this petition.

D. Cumulative Effects

There is no information to indicate that any toxic effects produced by dimethomorph would be cumulative with those of any other chemical. The fungicidal mode of action of dimethomorph is unique; dimethomorph inhibits cell wall formation only in Oomycete fungi. The result is lysis of the cell wall which kills growing cells and inhibits spore formation in mature hyphae. This unique mode of action and limited pest spectrum suggest that there is little or no potential for cumulative toxic effects in mammals. In addition, the toxicity studies submitted to support this petition do not indicate that dimethomorph is a particularly toxic compound. No toxic end-points of potential concern were identified.

E. Safety Determination

1. *U.S. population*. The proposed RfD is 0.1 mg/kg bwt/day, based on a NOAEL of approximately 10 mg/kg bwt/day (200 ppm) from a 2–year dietary toxicity study in rats that demonstrated decreased body weight and liver foci in females at 750 ppm. Because American Cyanamid Company believes that dimethomorph technical is not genotoxic, carcinogenic, or teratogenic and is not a reproductive toxicant, the proposed RfD is calculated using an uncertainty factor of 100. The TMRC for imported hops is estimated at 0.0000515 mg/kg bwt/day for the general population. This represents a dietary exposure to the general U.S. population which is 0.05% of the RfD. Similarly, the TMRC for all tomato commodities is estimated at 0.0005818 mg/kg bwt/day for the general U.S. population. This represents a dietary exposure to the general U.S. population which is 0.58% of the RfD. No population subgroup is more highly exposed to hops than the general population. Children ages 1–6 and 7–12 are more highly exposed to tomato commodities than the general population. The TMRC values for tomato commodities are estimated at 0.0011050 and 0.0008449 mg/kg bwt/day for children ages 1–6 and 7–12, respectively. The dietary exposure to children ages 1–6 is 1.10% of the RfD, and the dietary exposure to children ages 7–12 is 0.84% of the RfD. The combined TMRC for all current and proposed dimethomorph tolerances in hop, tomatoes, cereal grain commodities, cantaloupe, cucumber, squash, watermelon, potatoes, and grapes will utilize less than 10% of the RfD for the general U.S. population. Since EPA generally has no concern for exposures below 100% of the RfD, EPA should conclude that there is a reasonable certainty that no harm will result from aggregate exposure to dimethomorph residues in or on commodities of the cited crops.

2. *Infants and children*. The TMRC for hops consumed by infants, non-nursing infants, children ages 1–6 and children ages 7–12 is minimal. For all population subgroups, consumption of residues of dimethomorph in or on hops will use 0.00% of the RfD. The TMRC for tomato commodities consumed by infants, non-nursing infants, children ages 1–6 and children ages 7–12 is also minimal. The consumption of residues of dimethomorph on tomato commodities will use 0.17%, 0.25%, 1.10%, and 0.84% of the RfD for infants, non-nursing infants, children ages 1–6 and children ages 7–12, respectively. The combined TMRC values for the proposed dimethomorph tolerances in/on hops, tomatoes, potatoes and grapes in infants and non-nursing infants are 0.0023770 mg/kg bwt/day and 0.0026026 mg/kg bwt/day, respectively. The combined tolerances will use less than 5% of the RfD for infants and non-nursing infants (2.38% and 2.60%, respectively). The combined TMRC values for the proposed dimethomorph tolerances in/on hops, tomatoes, potatoes and grapes consumed by a child 1–6 years of age is 0.0043911 mg/kg bwt/day, which is less than 5% (actual 4.39%) of the RfD. The

combined TMRC values for the proposed dimethomorph tolerances in/on hops, tomatoes, potatoes and grapes consumed by a child 7–12 years of age is 0.0018062 mg/kg bwt/day, which is also less than 5% (actual 1.81%) of the RfD. Moreover, the combined TMRC values for all current and proposed dimethomorph tolerances will utilize less than 10% of the RfD for each of these subgroups. American Cyanamid Company believes that the results of the studies submitted to support this package provide no evidence that dimethomorph caused reproductive, developmental or fetotoxic effects. No such effects were noted at dose levels which were not maternally toxic. The NOAELs observed in the developmental and reproductive studies were 6 to 65 times higher than the NOAEL used to establish the proposed RfD (10 mg/kg bwt/day). There is no evidence to indicate that children or infants would be more sensitive than adults to toxic effects caused by exposure to dimethomorph. Therefore, American Cyanamid believes that the results of the toxicology and metabolism studies support both the safety of dimethomorph technical to humans based on the intended use as a fungicide on hops, tomatoes, potatoes and grapes and the granting of the requested tolerances for hops, tomato, potato and grape commodities.

F. International Issues

No Codex maximum residue levels have been established for dimethomorph to date.

[FR Doc. 00–5632 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181074; FRL–6493–4]

Acibenzolar; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Virginia Department of Agriculture and Consumer Services to use the pesticide Acibenzolar (CAS No. 135158-54-2) to treat up to 1,000 acres of tomatoes to control bacterial diseases. The Applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket control number OPP-181074, must be received on or before March 23, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181074 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; fax number: (703) 308–5433; e-mail address: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
State government	9241	State agencies that petition EPA for section 18 pesticide exemption

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR 166. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–181074. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181074 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB),

Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3.*Electronically*. You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–181074. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. Virginia Department of Agriculture and Consumer Services has requested the Administrator to issue a specific exemption for the use of acibenzolar on tomatoes to control bacterial diseases. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that discovery of a strain of bacterial speck resistant to the copper-based pesticides traditionally used for control, has created an emergency situation. Significant economic losses are expected without adequate control and Acibenzolar has been shown to provide good control of this disease.

The Applicant proposes to make no more than eight applications at rates of 0.3 to 0.75 oz. of formulation per acre, on up to 1,000 acres of tomatoes in Virginia. The use season would be from May 1, 2000 until December 31, 2000, and at maximum use rates could result in the use of up to 375 lbs. of formulated pesticide.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by the EPA. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Virginia Department of Agriculture Consumer Services.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–5633 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59369; FRL–6496–7]

Approval of Test Marketing Exemption for a Certain New Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–00–1. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective on March 1, 2000.

FOR FURTHER INFORMATION CONTACT: For general information contact: Joseph S. Carra, Acting Division Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1815 and fax number: (202) 554–0551; and e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Adella Watson, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3752; and e-mail address: watson.adella@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all

the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. *In person.* The Agency has established an official record for this action under docket control number OPPTS–59369. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorize EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

IV. What Action is the Agency Taking?

EPA has approved the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

V. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME 00–1.

Date of Receipt: January 7, 2000.

Notice of Receipt: February 25, 2000 (65 FR 10086).

Applicant: The Procter and Gamble Company.

Chemical: (G) Salt of substituted aliphatic benzene sulfonic acid

Use: (G) Consumer product ingredient

Production Volume: CBI

Number of Customers: 300,000 to 625,000 households

Test Marketing Period: 20 months, commencing on first day of commercial manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

VI. What was EPA's Risk Assessment for this TME?

EPA identified no significant environmental concerns for the test market substance. EPA's concern for lung toxicity and other human health effects were mitigated based on the physical form of the substance (imported as beads) and the closed processing system. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

VII. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: March 1, 2000.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 00–5631 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act Notice

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the Monte Carlo Hotel, Las Vegas, Nevada, on March 9, 2000, from 2:30 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Monte Carlo Hotel, 3770 Las Vegas Boulevard, South, Las Vegas, Nevada 89109, 702–730–7777.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

- *Approval of Minutes*

—February 17, 2000 (Open and Closed)

- *New Business*

—Regulations

- Loans to Designated Parties [12 CFR Part 614] (Proposed)
- Disclosure to Shareholders—Annual Report [12 CFR Part 620] (Proposed)

Dated: March 3, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–5721 Filed 3–3–00; 5:02 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–292]

Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for May 10, 2000; Report No. AUC–0031–C (Auction No. 31)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice announces the auction and procedures governing the auction of licenses for Fixed, Mobile, and Broadcasting service in the 747–762 and 777–792 MHz bands (''Auction No. 31''), scheduled to commence on May 10, 2000. As discussed in greater detail herein, Auction No. 31 will be composed of 12 licenses in 747–762 and 777–792 MHz bands. One 20 megahertz license (consisting of paired 10 megahertz blocks) and one 10 megahertz license (consisting of paired 5 megahertz blocks) will be offered in each of six regions to be known as the 700 MHz band economic area groupings (''700 MHz band EAGs'').

DATES: Auction No. 31 is scheduled for May 10, 2000.

FOR FURTHER INFORMATION CONTACT: Media Contact, Meribeth McCarrick at (202) 418–0654; Auctions Legal Branch, Howard Davenport at (202) 418–0660;. Kathy Garland, Project Manager, Auctions Operations Branch at (717) 338–2888; or Craig Bomberger, Analyst, Auctions Operations Branch at (202) 418–0660; Commercial Wireless Division, Roger Noel at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released February 18, 2000. The complete text of the public notice, including all attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, D.C. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's website at *http://www..fcc.gov.*

List of Attachments Available at the FCC

Attachment A: Summary of 700 MHz Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids
Attachment B: FCC Auction Seminar Registration Form
Attachment C: Electronic Filing and Review of the FCC Form 175
Attachment D: Guidelines for Completion of FCC Form 175 and Exhibits
Attachment E: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)
Attachment F: FCC Bidding Preference/Remote Software Order Form
Attachment G: Bid Increments and Exponential Smoothing
Attachment H: Accessing the FCC Network Using Windows 95/98
Attachment I: Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules
Attachment J: Incumbent Television Licensees on Channels 59–68

I. General Information

A. Introduction

1. The *Auction Public Notice* announces the procedures and minimum opening bids for the upcoming auction of licenses for Fixed, Mobile, and Broadcasting services in the 747–762 and 777–792 MHz bands (''Auction No. 31''). On January 10, 2000, the Wireless Telecommunications Bureau (''Bureau'') released a public notice, (*See* ''Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for May 10, 2000; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues,'' Public Notice, (''*Auction No. 31 Comment Public Notice*''), 65 FR 2956 (January 19, 2000) seeking comment on the establishment of reserve prices or minimum opening bids for Auction No. 31, in accordance with the Balanced Budget Act of 1997. (*See* section 3002(a), Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997) (''Budget Act''); 47 U.S.C. 309(j)(4)(F). In addition, the Bureau sought comment on a number of procedures to be used in Auction No. 31. (*See Auction No. 31 Comment Public Notice* at 5–6.) The Bureau received three comments and five reply comments in response to the *Auction No. 31 Comment Public Notice.*

i. Background of Proceeding

2. The 746–806 MHz band has historically been used exclusively by television stations (Channels 60 through 69). Incumbent analog television broadcasters are permitted by statute to continue operations in this band until their markets are converted to digital television (''DTV''). (*See* 47 U.S.C. 337(e); *See* also Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service, MM Docket No. 87–268, *Reconsideration of Fifth Report and Order,* 63 FR 15774 (April 1, 1998), 13 FCC Rcd 6860, 6887 (1998). The Budget Act directed the Commission to reallocate this spectrum for public safety and commercial use by December 31, 1997, (*See* section 337(a) of the Communications Act, 47 U.S.C. 337(a) and to commence competitive bidding for the commercial licenses on the reallocated spectrum after January 1, 2001. (*See id.* at section 337(b)(2)(a). In November 1999, Congress enacted a consolidated appropriations statute that revised the latter instruction. (*See Consolidated Appropriations,* Appendix E, section 213. *See* also 145 Cong. Rec. H12493–94 (Nov. 17, 1999). This legislation accelerated the schedule for auction of the commercial spectrum bands, and requires that the proceeds from the auction of these bands be deposited in the U.S. Treasury by September 30, 2000.

ii. Licenses To Be Auctioned

3. The licenses available in this auction consist of one 20 megahertz license (consisting of paired 10 megahertz blocks) and one 10 megahertz license (consisting of paired 5 megahertz blocks) in each of six regions to be known as the 700 MHz band economic area groupings (''700 MHz Band EAGs''). The following table contains the Block/Frequency Band Limits Cross-Reference List for each region in Auction No. 31:

747–762 AND 777–792 MHz ALLOCATIONS

License suffix	Frequencies
C	747–752, 777–782
D	752–762, 782–792

B. Rules and Disclaimers

i. Relevant Authority

4. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 700 MHz band, contained in Title 47, part 27 of the Code of Federal

Regulations, and those relating to application and auction procedures, contained in Title 47, part 1 of the Code of Federal Regulations.

5. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, ''Terms'') contained in this public notice; the *Auction No. 31 Comment Public Notice;* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *First Report and Order,* WT Docket No. 99–168, FCC 00–5 (released January 7, 2000) (''*700 MHz First Report & Order*''), 65 FR 3139 (January 20, 2000); Reallocation of Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97–157, *Report and Order,* 12 FCC Rcd 22953 (1998), *recon.,* 13 FCC Rcd 21578 (1998) (''*Reallocation Reconsideration*'').

6. The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC Auctions World Wide Web site at *http://www.fcc.gov/wtb/auctions.* Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314–3070. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 00–5 for the *700 MHz First Report & Order*).

ii. Prohibition of Collusion

7. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. (*See 700 MHz First Report & Order,* at paragraphs 128–129.) This prohibition begins with the filing of short-form applications, and ends on the down payment due date after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.,* law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

8. The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. In Auction No. 31, for example, the rule would apply to any applicants bidding for the same 700 MHz Band EAG. Therefore, applicants that apply to bid for ''all markets'' would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. (*See* 47 CFR 1.2105(c). (Note that bidders with nationwide status are prohibited from entering to such agreements.) If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same geographic license areas(s). By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. (See 47 CFR 1.65) Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

iii. Protection of Television Services

9. Licensees operating on the spectrum associated with Channels 60, 61, 62, 65, 66, and 67 must comply with the co-channel and adjacent channel provisions of § 27.60 of our rules. For example, a licensee operating on any portion of the 10 megahertz block (*i.e.,* between 752 MHz and 762 MHz) that coincides with Channel 61 will have to provide co-channel protection to television stations operating on Channel 61 and adjacent channel protection to television stations operating on Channels 60 and 62; and any licensee operating on any portion of the 10 megahertz block that coincides with Channel 62 will have to provide co-channel protection to television stations operating on Channel 62 and adjacent channel protection to television stations operating on Channels 61 and 63. Licensees operating on spectrum between 747 MHz and 752 MHz (Channel 60), in addition to providing co-channel protection to Channel 60 television stations, will have to provide adjacent channel protection to television stations operating on both Channel 61 and 59. (*See* 47 CFR 90.309.)

iv. Negotiations With Incumbent Broadcast Licensees

10. As the Commission noted in the *700 MHz First Report & Order:* ''The Congressional plan set forth in sections 336 and 337 of the Communications Act and in the 1997 Budget Act is to transition this spectrum from its current use for broadcast services to commercial use and public safety services.'' (*See 700 MHz First Report & Order* at 145; *See* also 47 U.S.C. 336–337.) Congress also has directed the Commission to auction the 36 MHz of spectrum allocated for commercial use at least six years before the relocation deadline for incumbent broadcasters in this spectrum, while adopting interference limits and other technical restrictions necessary to protect full-service analog television service during the transition to DTV. (See Public Law 106–113 Stat. 1501, Appendix E, Section 213; Consolidated Appropriations, Appendix E, Sec. 213. See also 145 Cong. Rec. at H12493–94, (Nov. 17, 1999)). In these circumstances, the Commission will consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new licensees in these bands. In considering whether the public interest would be served by approving specific requests, the Commission would, for

example, consider the benefits to consumers of the provision of new wireless services, such as next generation mobile services or Internet fixed access services. The Commission would also consider whether such agreements would help clear spectrum for public safety use in these bands and could result in the provision of new wireless service in rural and other relatively underserved communities. On the other hand, the Commission would also consider loss of service to the broadcast community of the licensee. For example, the Commission would consider the availability of the licensee's former analog programming within the service area, through simulcast of that programming on the licensee's DTV channel or distribution of the programming on cable or DBS, or the availability of similar broadcast services within the service area (e.g., whether the lost service is the only network service, the only source for local service, or the only source for otherwise unique broadcast service).

v. Canadian and Mexican Border Regions

11. There are currently separate agreements with Canada and Mexico covering TV broadcast use of the UHF 470–806 MHz band. Such agreements do not reflect the additional use or services adopted in the *700 MHz First Report & Order* for 746–764 and 776–794 MHz bands. (See 700 MHz First Report & Order at 146.) While the Commission staff has been involved in discussions with both countries regarding coordination of interference criteria for the use of these bands in the border areas for the additional services, agreements have yet to be reached. Therefore, until such agreements have been finalized, the Commission found it necessary to adopt certain interim requirements for licenses in these bands along the Canada and Mexico borders. (*See id.* at fn no.17.) Accordingly, licenses issued for these bands within 120 km of the borders were made subject to whatever future agreements the United States developed with those two countries. In that the existing agreements for the protection of TV stations in those countries are still in effect and must be recognized until they are replaced or modified to reflect the new uses, the Commission decided that licenses in the border areas will be granted on the condition that harmful interference may not be caused to, but must accept interference from, UHF TV transmitters in Canada and Mexico. Furthermore, the Commission pointed out that modifications may be necessary to comply with whatever provisions are ultimately specified in future agreements with Canada and Mexico regarding the use of these bands. (*See id.* at paragraph 146.)

vi. Due Diligence

12. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

13. Potential bidders are reminded that there are a number of incumbent broadcast television licensees already licensed and operating in the 746–764 and 776–794 MHz bands (television Channels 60–62 and 65–67) that will be subject to the upcoming auction. As discussed herein in greater detail, the Commission made clear that geographic area licensees operating on the spectrum associated with Channels 60, 61, 62, 65, 66, and 67 must comply with the co-channel and adjacent channel provision of section 90.545 of the Commission's rules. (*See* 47 CFR 90.545.) In addition, geographic area licensees operating fixed stations in the 746–764 MHz band must comply with the relevant provisions for ''base stations'' in §§ 90.309 and 90.545 of the Commissions Rules; and licensees operating fixed stations in the 776–794 MHz band must comply with the relevant provisions for ''control stations'' in those sections of the rules. (*See* 47 CFR 90.309 and 90.545.).

14. These limitations may restrict the ability of such geographic licensees to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license areas. Listed in Attachment K are the facilities of incumbent television permittees and licensees on television Channels 60–62 and 65–67 as well as on television Channels 59 and 68. However, prospective bidders should not rely solely on this list, but should carefully review the Commission's databases and records before formulating bidding strategies. Records relating to these stations are available for public inspection during regular business hours in the Reference Information Center at the Federal Communications Commission, 445 Twelfth Street, SW, CY–A257, Washington, DC 20554. The Commission makes no representation or guarantees regarding the accuracy or completeness of the information in Attachment K. In addition, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the databases. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

15. Potential bidders should also be aware of the following:

QUALCOMM Incorporated, Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, Service Rules for the 746–764 and 776–794 MHz Bands and Revisions to part 27 of the Commission's rules, Petition for Declaratory Ruling (filed January 28, 2000).

''Wireless Telecommunications Bureau Seeks Comment On QUALCOMM Incorporated's Petition for Declaratory Ruling Seeking 700 MHz Band License Pursuant to Ruling of U.S. Circuit Court of Appeals,'' *Public Notice,* DA 00–219 (released February 4, 2000); Extension of Filing Deadline for Comments to QUALCOMM Incorporated's Petition for Declaratory Ruling, *Public Notice,* DA 00–273, 65 FR 9266 (February 24, 2000).

16. Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, waiver requests, requests for special temporary authority (''STA''), petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to the facilities in Attachment K. We note that resolution of these pending matters could have an impact on the availability of spectrum for licensees in the 746–764 and 776–794 MHz bands. While the Commission will continue to act on pending matters, some of these matters may not be resolved by the time of auction. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 31 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 31 are strongly encouraged to continue such research during the auction.

vi. Bidder Alerts

17. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally,

technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

18. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 31 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

19. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific 700 MHz proposals may also call the FCC National Call Center at (888) CALL–FCC ((888) 225–5322).

vii. National Environmental Policy Act (NEPA) Requirements

20. The licensee must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a 700 MHz facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. *See* 47 CFR 1.1305 through 1.1319. The Commission's NEPA rules require that, among other things, the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

21. The Auction No. 31 Comment Public Notice announced that the auction would begin on May 10, 2000. Two commenters ask that the Commission complete any proceeding associated with the terms and conditions for the next C and F block PCS auction before the scheduled commencement of Auction No. 31. Although we have begun consideration of these issues by seeking comment on two petitions regarding C and F block rules, we cannot make the auction start date dependent upon the conclusion of other proceedings. The Commission is under congressional mandate to deposit the receipts from Auction No. 31 into the United States Treasury by September 30, 2000. (*See* Public Law 106–113, 113 Stat. 1501, Appendix E, section 213. *See also Consolidated Appropriations,* Appendix E, section 213. *See* also 145 Cong. Rec. at H12493–94, Nov. 17, 1999.) Therefore, all potential bidders, must make business decisions based on the environment in which they currently operate. The business decisions that these two companies must make are no different than the judgments that any other similarly situated potential bidder must make. Accordingly, the auction will begin on Wednesday, May 10, 2000. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

22. Auction No. 31—700 MHz Band

iii. Bidding Methodology

23. The bidding methodology for Auction No. 31 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

iv. Pre-Auction Dates and Deadlines

24. The following are important events and deadlines related to Auction No. 31:

Auction Seminar: March 30, 2000
Short-Form Application (FCC FORM 175): April 10, 2000; 5:30 p.m. ET
Upfront Payments (via wire transfer): April 24, 2000; 6 p.m. ET
Orders for Remote Bidding Software: April 25, 2000; 5:30 p.m. ET
Mock Auction: May 8, 2000
Auction Begins: May 10, 2000

v. Requirements for Participation

25. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 5:30 pm ET, April 10, 2000.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 pm ET, April 24, 2000.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

26. The following is general contact information relating to Auction No. 31:

General Auction Information—General Auction Questions; Seminar Registration; Orders for Remote Bidding Software: FCC Auctions Hotline, (888) 225–5322, Press Option #2 or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET.

Auction Legal Information—Auction Rules, Policies, Regulations: Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.

Licensing Information—Rules, Policies, Regulations; Licensing Issues; Incumbency/Protection Issues: Commercial Wireless Division, (202) 418–0620.

Technical Support—Electronic Filing Assistance; Software Downloading: FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: 8 a.m.–6:00 p.m. ET.

Payment Information—Wire Transfers; Refunds: FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax).

Telephonic Bidding—Will be furnished only to qualified bidders.

FCC Copy Contractor—Additional Copies of Commission Documents: International Transcription Services, Inc., 445 12th Street, SW Room CY—B400, Washington, DC 20554, (202) 314–3070.

Press Information—Meribeth McCarrick (202) 418–0654.

FCC Forms—(800) 418–3676 (outside of Washington, DC), (202) 418–3676 (in the Washington Area), http://www.fcc.gov/formpage.

FCC Internet Sites—http://www.fcc.gov/wtb/auctions, http://www.fcc.gov ftp://ftp.fcc.gov,

II. Short-Form (FCC Form 175) Application Requirements

27. Guidelines for completion of the short-form (FCC Form 175) are set forth on Attachment D to this public notice. The short-form application seeks the applicant's name and address, legal classification, status, bidding credit eligibility, identification of the authorization(s) sought, the authorized bidders, and contact persons.

A. Ownership Disclosure Requirements (Form 175 Exhibit A)

28. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing Form 175, applicants will be required to file an Exhibit A providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (Form 175 Exhibit B)

29. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. (*See* 47 CFR 1.2105(a)(2)(viii); 1.2105(c)(1); Bidders with nationwide bidding status are prohibited from entering such agreements) Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. *See* 47 CFR 1.2105(a)(2)(ix). As discussed herein, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its application and may not continue discussions with applicants for the same geographic license area(s) after the deadline. In cases where applicants have entered into consortia or joint bidding arrangements, applicants must submit an Exhibit B to the FCC Form 175.

30. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same geographic license area provided that (i) the attributable interest holder(s) certify that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. *See* 47 CFR 1.2105(c)(4)(I) & (ii). While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could broach on impermissible subject matters because they may convey pricing information and bidding strategies.

C. Small Business Bidding Credits (Form 175 Exhibit C)

31. In the *700 MHz First Report & Order,* the Commission adopted small business provisions to promote and facilitate the participation of small businesses in competitive bidding for licenses in the 700 MHz band. (*See* 47 CFR 27.502.)

i. Eligibility

32. Bidding credits are available to small businesses and very small businesses as defined in 47 CFR 27.502(a). For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling interests, and affiliates of the applicant and its controlling interests. The Commission does not impose specific equity requirements on controlling interests. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the applicant and its affiliates will be counted in determining small business eligibility. The term ''control'' includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto control is determined on a case-by-case basis.* The following are some common indicia of control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

33. A consortium of small businesses, or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which *individually* satisfies the definition of small or very small business in § 27.502. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

ii. Application Showing

34. Applicants should note that they will be required to file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as a small business or very small business (or consortia of small or very small businesses) for this auction. (*See* 47 CFR 27.502 and 1.2105.) Specifically, for Auction No. 31, applicants applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate,* the gross revenues for the preceding three years of each of the following: (i) the applicant; (ii) the applicant's affiliates; (iii) the applicant's controlling interests; and (iv) the affiliates of the applicant's controlling interests. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total

gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, and its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

iii. Bidding Credits

35. Applicants that qualify under the definitions of small business and very small business (or consortia of small or very small businesses) as are set forth in 47 CFR 27.502, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. (*See* 47 CFR 27.502) The size of a 700 MHz band bidding credit depends on the average gross revenues for the preceding three years of the bidder and its controlling interests and affiliates:

- A bidder with average gross revenues of not more than $40 million for the preceding three years receives a 15 percent discount on its winning bids for 700 MHz band licenses (''*small business*''); (*See* 47 CFR 27.502 and 1.2110(e)(iii)).
- A bidder with average gross revenues of not more than $15 million for the preceding three years receives a 25 percent discount on its winning bids for 700 MHz band licenses (''very small business''). (*See* 47 CFR 27.502 and 1.2110(e)(ii)).

36. Bidding credits are not cumulative: qualifying applicants receive either the 15 percent or the 25 percent bidding credit, but not both.

37. Bidders in Auction No. 31 should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. Finally, bidders should also note that there are no installment payment plans in Auction No. 31.

D. Other Information (Form 175 Exhibits D and E)

38. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of ''designated entities'' in its auctions. Applicants wishing to submit additional information may do so in Exhibit E, Miscellaneous Information to the FCC Form 175.

E. Minor Modifications to Short-Form Applications (FCC Form 175)

39. After the short-form filing deadline (April 10, 2000), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.,* change their license selections, change the certifying official or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4–A760 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport of the Auctions and Industry Analysis Division at (202) 418–0660.

F. Maintaining Current Information in Short-Form Applications (FCC Form 175)

40. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

41. On March 30, 2000, the FCC will sponsor a free seminar for Auction No. 31 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the 700 MHz band service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff. To register, complete the appropriate registration form and submit it by Tuesday, March 28, 2000. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due April 10, 2000

42. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission by 5:30 p.m. ET on April 10, 2000. Late applications will not be accepted.

43. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

i. Electronic Filing

44. Applicants must file their FCC Form 175 applications electronically. (See 47 CFR 1.2105(a).) Applications may generally be filed at any time from March 30, 2000 until 5:30 p.m. ET on April 10, 2000. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on April 10, 2000.

45. Applicants must press the ''Submit Form 175'' button on the ''Submit'' page of the electronic form to successfully submit their FCC Forms 175. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 8 a.m. to 6 p.m. ET, Monday through Friday.

ii. Completion of the FCC Form 175

46. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

47. The FCC Form 175 electronic review system may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs)

on any Exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment C for details on accessing the review system.

C. Application Processing and Minor Corrections

48. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (ii) those applications rejected; and (iii) those applications that have minor defects that may be corrected, and the deadline for filing such corrected applications.

49. As described more fully in the Commission's rules, after the April 10, 2000, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.,* change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility). (*See* 47 CFR 1.2105.)

D. Upfront Payments—Due April 24, 2000

50. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on April 24, 2000.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 31 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the April 24, 2000 deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Auction Payments by Wire Transfer

51. Wire transfer payments must be received by 6:00 p.m. ET on April 24, 2000. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC 910–0171
OBI Field: (Skip one space between each information item)
''AUCTIONPAY''
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter ''A31U'')
FCC CODE 1 (same as FCC Form 159, block 23A: ''31'')
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358430

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

52. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 209–6045 or (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 31.'' Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

53. A completed FCC Remittance Advice Form (FCC Form 159) must accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E. An electronic version of the FCC form 159 is available after submitting the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

54. In the Part 1 *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making,* the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. (*See* Amendment of part 1 of the Commission's rules—Competitive Bidding Proceeding WT Docket No. 97–82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making,* 62 FR 13540 (March 21, 1997), 12 FCC Rcd. 5686, 5697–5698, paragraph 16 (1997)). In the *Auction No. 31 Comment Public Notice,* the Bureau proposed upfront payments for Auction No. 31. (*See Auction No. 31 Comment Public Notice* at 2–3.) Specifically, the Bureau proposed calculating the upfront payment based on information available in the form of a Congressional estimate of the value of the spectrum. There were no comments filed on the proposed upfront payments set forth in the *Auction No. 31 Comment Public Notice.*

55. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 31, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.,* a $28,000,000 upfront payment provides the bidder with 28,000,000 bidding units. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses that an applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

56. In order to be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

57. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds

58. The Commission will use wire transfers for all Auction No. 31 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants may either submit the information electronically after filing their short-form application or fax the Wire Transfer Instructions by April 24, 2000, to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Michelle Bennett or Gail Glasser, at (202) 418–2843. Should the payer fail to submit the requested information, the refund will be returned to the original payer. For additional information, please call (202) 418–1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
Correspondent Bank (if applicable)
ABA Number
Account Number
(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Section V.D.

E. Auction Registration

59. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

60. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

61. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Friday, May 5, 2000, should contact the Auctions Hotline at 717–338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

62. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in* person at the FCC Auction Headquarters located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

F. Remote Electronic Bidding Software

63. Qualified bidders are allowed to bid electronically or by telephone. If choosing to bid electronically, each bidder must purchase their own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is $175.00 and must be ordered by Tuesday, April 25, 2000. For security purposes, the software is only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 31. If bidding telephonically, the telephonic bidding phone number will be supplied in the second Federal Express mailing of confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, an FCC Bidding Preference/Remote Software Order Form can be accessed and electronically completed when submitting the FCC Form 175. This form is Attachment F.

G. Mock Auction

64. All qualified bidders will be eligible to participate in a mock auction on May 8, 2000. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

65. The first round of bidding for Auction No. 31 will begin on May 10, 2000. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

66. In the *Auction No. 31 Comment Public Notice* at 2, we proposed to award 12 licenses in the 700 MHz bands in a single, simultaneous multiple round auction. We received no comment on this issue. We conclude that it is operationally feasible and appropriate to auction the 700 MHz band licenses through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of any synergies that exist among licenses and is most administratively efficient.

ii. Maximum Eligibility and Activity Rules

67. In the *Auction No. 31 Comment Public Notice at 2–3,* we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

68. For Auction No. 31 we will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under ''Auction Stages'' as set forth in Section IV.A.iv), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not define the total dollars a bidder may bid on any given license.

69. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their

maximum eligibility during each round of the auction.

70. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*See* ''Minimum Accepted Bids'' in Section IV.B.iii). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under ''Auction Stages'' in Section IV.A.iv and ''Stage Transitions'' in Section IV.A.v, we adopt them for Auction No. 31.

iii. Activity Rule Waivers and Reducing Eligibility

71. In the *Auction No. 31 Comment Public Notice,* we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction. We received no comment on this issue.

72. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

73. The FCC automated auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

74. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in ''Auction Stages.'' Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

75. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

iv. Auction Stages

76. In the *Auction No. 31 Comment Public Notice* at 3–4, we proposed to conduct the auction in three stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 50 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 80 percent of its current bidding eligibility. Finally, we proposed that a bidder in Stage Three, in order to maintain eligibility, would be required to be active on 100 percent of its current bidding eligibility. We received no comment on these proposals.

77. We conclude that the auction will be composed of three stages, which are each defined by an increasing activity rule. We will adopt our proposals for the activity rules as follows. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 50 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by two.

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by five-fourths (5/4).

Stage Three: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 100 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be set at current round activity.

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

78. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 31.

v. Stage Transitions

79. In the *Auction No. 31 Comment Public Notice* at 3–4, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 10 percent for three consecutive rounds of bidding in each stage. However, we further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not

limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We received no comments on this subject.

80. We adopt our proposal. Thus, the auction will start in Stage One. Under the FCC's general guidelines the auction will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 31.

vi. Auction Stopping Rules

81. For Auction No. 31, the Bureau proposed to employ a simultaneous stopping rule. The Bureau also sought comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further sought comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

82. The Bureau further proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. (*See Auction No. 31 Comment Public Notice* at 11). We received no comment on these issues.

83. We adopt our proposals concerning the stopping rule. Adoption of these rules, we believe, is most appropriate for Auction No. 31 because our experience in prior auctions demonstrates that the simultaneous stopping rule balances the interests of administrative efficiency and maximum bidder participation. The substitutability between and among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support the use of a simultaneous stopping rule.

84. Under the simultaneous stopping rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses. In addition, the Bureau retains the discretion to close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Under this modified stopping rule, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this stopping rule procedure. We will notify bidders in advance of implementing any change to our simultaneous stopping rule.

85. The Bureau also retains the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

86. Further, in its discretion, the Bureau reserves the right to invoke the ''special stopping rule,'' whereby it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day.

vii. Auction Delay, Suspension, or Cancellation

87. In the *Auction No. 31 Comment Public Notice* at 4, we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

88. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

89. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction. This public notice will be included with the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will be included in the Qualified Bidder Public Notice.

90. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

91. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions. (*See* Amendment of Part of the Commission's Rules-Competitive Bidding Procedures, WT Docket No. 97–82, *Third Report and Order and Second Further Notice of—Proposed Rule Making*, 63 FR 770 (January 7, 1998), 13 FCC Rcd. at 141, 455–456) (1998).

92. In the *Auction No. 31 Comment Public Notice* at 5–6, the Bureau proposed to establish minimum opening bids for Auction No. 31 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 31, the Commission proposed calculating the minimum opening bid based on information available in the form of a Congressional estimate of the value of the spectrum.

93. In its comments, U S West Wireless, LLC (U S West) argues that the proposed minimum opening bid amounts have failed to account for the ''overly stringent'' limitations adopted in the *700 MHz First Report & Order* on out-of-band emissions (''OOBE'') and permissible transmit power. (*See* U S West Comments at 3–4). We are not persuaded that the proposed minimum opening bids are too high. We note that in establishing OOBE, the Commission took into account the impact of limitations on interference from new commercial licensees on public safety service licensees. (*See 700 MHz First Report & Order* at 103–107). The Commission stated: ''[W]e recognize the need to adopt technical rules that provide adequate protection to public safety entities operating in this band. We are mindful, however that Congress also intended that we establish rules that will enable viable commercial operations here.'' (*See id.*). Thus, the Commission set OOBE limits that, while achieving the primary goal of protecting public safety, also struck a reasonable balance between protecting public safety and maintaining the commercial viability of this band.

94. Further, we note that no other parties commented on either the OOBE and transmit power limits or on the proposed minimum opening bids. Significantly, U S West did not submit an alternative proposal or substantiate its position with an alternate valuation or quantitative analysis. Moreover, U S West did not even comment on this issue in the service rule proceeding. Taking all of these factors into account, we will adopt the minimum opening bids, as proposed, for the licenses in Auction No. 31, which are reducible at the discretion of the Bureau. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. (*See* section 3002(F) of the Budget Act). Based on our experience in using minimum opening bids in other auctions, we believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient assignment of licenses. (*See* 47 U.S.C. 309(j)(3)(C)).

iii. Bid Increments and Minimum Accepted Bids

95. In the *Auction No. 31 Comment Public Notice* at 6, we proposed to use a smoothing methodology to calculate minimum bid increments. We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate. (*See id.*). We received no comment on this issue.

96. We will adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is in Attachment G.

97. We adopt our proposal of initial values for the maximum of 0.2, or 20 percent of the license value, and a minimum of 0.1, or 10 percent of the license value. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (*e.g.*, by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 31 if circumstances warrant.

iv. High Bids

98. Each bid will be date-and time-stamped when it is entered into the FCC computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which the Commission receives bids. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date-and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

v. Bidding

99. During a bidding round, a bidder may submit bids for as many licenses as it wishes, subject to its eligibility, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date-and time-stamp of that bid reflects the latest time the bid was submitted.

100. Please note that all bidding will take place remotely either through the

automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 31.

101. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) The licenses applied for on FCC Form 175; and (ii) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

102. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

103. The bid entry screen of the automated auction system software for Auction No. 31 allows bidders to place multiple increment bids, which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license. The bidding software will display the bid increment for each license.

104. To place a bid on a license, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

Amount Bid = High Bid + (Bid Mult * Bid Increment)

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter ''1'' in the bid increment multiplier column and press submit.

105. For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter ''1'' in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

106. In the *Auction No. 31 Comment Public Notice*, we proposed bid removal and bid withdrawal rules. (*See Auction No. 31 Comment Public Notice* at 8.) With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, we proposed, would be at the bidder's discretion. We received no comment on this issue.

107. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various geographic area licenses in combination, we conclude that, for Auction No. 31, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or ''gaming'' in this auction.

108. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a ''place holder'' on the license until a new acceptable bid is submitted on that license.

109. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid'' function in the software, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.* a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which we received no comments, will enhance bidder flexibility during the auction. Therefore, we will adopt these procedures for Auction No. 31.

110. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the ''withdraw bid'' function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in ''High Bids,'' Section IV.B.iv.

111. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. (*See* 47 CFR 1.2104(g) and 1.2109.) Specifically, a bidder (''Bidder X'') that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that Bidder X has deposited with the Commission. If, in a

subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and Bidder X may request a refund of the interim three (3) percent payment. If, in a subsequent auction, the selling price for that license is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid withdrawal payment, less the three percent interim payment, equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less.

vii. Special 30 MHz Nationwide Bid Withdrawal Procedure

(a) Background

112. For the licenses being offered in Auction No. 31, we noted that there may be entities whose business plans are such that they may not wish to acquire any licenses if they are unable to aggregate them all. (*See Auction No 31 Comment Public Notice* at 9.) Our current rules are designed to facilitate the aggregation of licenses, and we believe they are adequate to facilitate the aggregation of all the 10 MHz or all 20 MHz licenses or any subset thereof. The bid withdrawal provisions of our Part 1 rules could, however, potentially discourage bidders from attempting a 30 MHz nationwide aggregation in an auction where there are divergent business plans. This is because, were such a large aggregation attempt ultimately to fail, a bidder might be left with a potentially large subset of licenses that it does not wish to win given its all-or-nothing strategy. The bidder would then be forced to withdraw all of the high bids it holds and pay a bid withdrawal payment. We therefore proposed and have determined to adopt a nationwide bid withdrawal procedure for the 747–762 MHz and 777–792 MHz bands to limit the exposure of bidders seeking a 30 MHz nationwide aggregation.

(b) Discussion

113. In its comments, PSINet Inc. (PSINet) asks that we allow applicants that choose to bid for a 30 MHz nationwide aggregation to maintain the ability to also bid on regional 30 MHz aggregations and that the ''Commission adopt a similar scheme for entities that desire to participate in regional 30 MHz aggregations to that proposed by the Commission for the nationwide 30 MHz aggregation.'' Cisco Systems, Inc. (Cisco) submitted reply comments in which it strongly urged the Commission to limit withdrawal penalties for regional 30 MHz bidders by adopting the bidding rule proposed by PSINet. On reply, PSINet emphasizes that the Commission should apply limited withdrawal penalties to applicants seeking to aggregate 30 MHz by obtaining both the 10 MHz and 20 MHz licenses in a region and contends that it is ''extremely unlikely that an entity will win a nationwide 30 MHz aggregation.'' Bell Atlantic Mobile, Inc. (BAM) takes the opposite position in its reply comments. According to BAM, we should not change long-standing auction procedures for either nationwide or regional bidders. AT&T Wireless Services, Inc.'s (AT&T) reply comments strongly suggest that the Commission should reject PSINet's request to impose reduced bid withdrawal penalties on bidders for regional, rather than nationwide, 30 MHz licenses.

114. In the *700 MHz First Report & Order*, the Commission directed the Bureau to create a modified withdrawal procedure for those bidders seeking a 30 megahertz nationwide aggregation, *i.e.*, those who have the greatest exposure under the standard bid withdrawal payment rule. (*See 700 MHz First Report & Order* at 126–127.) Neither PSINet nor Cisco presents compelling reasons why the Bureau can or should apply the special rule to those bidders that face less exposure. In fact, bidders in the past auctions have successfully aggregated licenses under the existing withdrawal rules. However, the Bureau notes that the existence of all-or-nothing nationwide business plans presents a unique situation for bidders. Likewise, BAM has not persuaded the Bureau to exercise its limited discretion not to make this procedure available to 30 MHz nationwide bidders. Accordingly, the Bureau will adopt the bid withdrawal provisions as stated in this section.

115. Bidders not choosing to avail themselves of the nationwide bid withdrawal provision may still aggregate licenses subject to our standard bid withdrawal provisions. (*See* 47 CFR 1.2104(g).) The nationwide bid withdrawal procedure is made available to limit the exposure associated with bid withdrawal payments for those bidders whose business plans require an all-or-nothing aggregation of all licenses in the auction, while still discouraging insincere bidding. Under the nationwide bid withdrawal procedure, an applicant will be required to declare on its short-form application whether it is seeking a 30 MHz nationwide aggregation and wishes to be subject to the nationwide bid withdrawal provisions. Instructions for doing so will be part of the electronic filing system for the short-form application.

116. An applicant that chooses to be a nationwide bidder will be required to be active in each round of bidding on all licenses (a 100 percent activity requirement). A nationwide bidder must win either the entire 30 MHz nationwide aggregation (all 12 licenses) or no licenses at all. (Note that a nationwide bidder does not necessarily have to be the standing high bidder on every license at the end of each round in order to fulfill the 100 percent activity requirement. Activity on a license in a given round is defined as a bidder either holding the high bid from the previous round or placing a valid bid in the current round.) Nationwide bidders that decide to no longer pursue the nationwide aggregation and hold any high bids may withdraw those high bids subject to the modified withdrawal payment described herein. Once a nationwide bidder withdraws a high bid from any market, it must withdraw any remaining high bids it holds from all other markets. (The automated auction system will allow a nationwide bidder only to withdraw all of its standing high bids and not any subset thereof.) The nationwide bidder will then have its eligibility reduced to zero, thus making the bidder ineligible to continue bidding for any licenses.

117. If a 30 MHz nationwide bidder withdraws, eligibility, activity rule waivers, and withdrawal round allowances will be restored to beginning auction levels for all other bidders except for any nationwide bidders that have withdrawn from the auction by either withdrawing their high bids or failing to meet the activity requirement (and thus having their high bids withdrawn for them). Without this restoration, few bidders would likely be eligible to bid on licenses withdrawn late in the auction. Upon the withdrawal of a nationwide bidder, the auction will pause for 24 hours to allow for the restoration of eligibility, activity rules waivers, and withdrawal allowances, and for the notification of all auction participants that such a withdrawal has occurred. The Bureau will contact the contact person listed on the FCC Form 175 for each qualified bidder that is eligible for the restoration of eligibility. Note that non-nationwide bidders that have already dropped out of the auction will also have their eligibility, activity rules waivers, and withdrawal allowances restored, and any nationwide bidders still in the

auction will have their activity rule waivers restored.

118. The automated auction system will not allow bidders that identify themselves as nationwide bidders to submit a group of bids that does not result in the bidder being active on all licenses in the auction. Nationwide bidders, like all other bidders in the auction, will be provided 5 activity rule waivers to preserve their maximum eligibility level in the instance that they do not meet the 100% activity requirement. In each round of bidding that a nationwide bidder fails to meet the activity rule requirement, an automatic waiver will be applied to preserve the bidder's maximum eligibility. If a nationwide bidder fails to meet the activity rule requirement and has no activity rule waivers remaining, the bidder's maximum eligibility will be reduced to zero and any high bids will automatically be withdrawn. In such a case, the system will treat the bidder as if the bidder had placed a withdrawal itself—making the bidder subject to the special withdrawal payments—and the auction will pause to allow for the restoration of eligibility, activity rules waivers, and withdrawal allowances, as described herein.

119. The bid withdrawal payment for a 30 MHz nationwide bidder that withdraws from the auction will be calculated as the difference between the sum of the standing high bids that the nationwide bidder withdraws and the sum of the subsequent winning bids on those withdrawn licenses. In addition, nationwide bid withdrawal payments will be limited to 5 percent of the aggregate withdrawn bids. The withdrawn licenses will be offered in the next round at the second highest bid price, which may be less than or equal to the amount of the withdrawn bid, without any bid increment. The FCC will serve as the ''place holder'' on the license until a new acceptable bid is submitted.

120. In the *700 MHz First Report & Order*, the Commission stated that nationwide bidders cannot win anything less than a nationwide 30 MHz aggregation. (*See 700 MHz First Report & Order* at 127.). Thus, in the event that there is no other bidding activity in a given round so that the auction would otherwise close under the simultaneous stopping rule, but a nationwide bidder holds the high bid on licenses that comprise less than a 30 MHz nationwide aggregation, the auction will not close. Rather, the auction will proceed another round and the nationwide bidder (and all other bidders failing to meet the activity requirement) will use an activity rule waiver, if any remain. Once all the nationwide bidder's activity rule waivers are used, its standing high bids will be withdrawn, and eligibility will be restored to other bidders, as described herein.

121. In its comments, BAM asks that if the Bureau decides to adopt a special withdrawal penalty rule for nationwide bidders, any such bidder should not be allowed to have any affiliation or bidding arrangement with any other bidder that is pursuing a regional or individual market bidding strategy. We agree with BAM on this point. In the Public Notice, we stated that any applicant who chooses nationwide bidder status will not be allowed to bid on anything other than all licenses comprising the 30 MHz nationwide aggregation. (*See Auction No. 31 Comment Public Notice* at 10.) We will not allow a bidder to do indirectly that which we have directly prohibited. Thus, any bidder who seeks nationwide bidding status shall not have any controlling interest in, or affiliate relationship with, any other applicant or any agreement of any kind relating to the licenses being auctioned.

122. AT&T raises a similar point in seeking clarification that upon withdrawal of a nationwide bidder from the auction, the eligibility of all other bidders, except ''bidding partners'' of the withdrawing nationwide bidder, will be restored to beginning auction levels. Since nationwide bidders are not permitted to enter into agreements regarding the licenses, AT&T's point is moot.

123. In reply comments, Omnipoint Corporation (Omnipoint) states that the bid withdrawal process for a nationwide bidder is not yet sufficiently clear. In support of its position, Omnipoint states that it is unclear whether the FCC requires nationwide bidders to exercise bid withdrawal. Contrary to Omnipoint's contention, the Commission clearly stated: ''An applicant that chooses to be such a nationwide bidder would not be allowed to bid on anything other than all licenses comprising the 30 megahertz nationwide aggregation, and must win either this nationwide aggregation or no licenses at all. Thus, once such a nationwide bidder withdraws from a market, it must withdraw from all markets and will be ineligible to continue bidding for any licenses.'' (*See 700 MHz First Report & Order* at 127.) If a nationwide bidder has standing high bids on some licenses but decides not to continue bidding on other licenses, then the bidder withdraws its standing high bids. This may be accomplished one of two ways: (i) A nationwide bidder may withdraw standing high bids using the bidding software. The bidding software will only allow a nationwide bidder to remove all or none of its standing high bids. Once a nationwide bidder exercises this option, it is out of the auction. (ii) A nationwide bidder may decide not to bid on licenses on which it is not already the standing high bidder. Once such a bidder's activity rule waivers expire, the FCC will withdraw the standing high bids for the bidder—which has the same effect as if the bidder had withdrawn its own bids.

124. The Bureau provides the following additional information in response to Omnipoint's Reply Comments. When a 30 megahertz nationwide bidder withdraws a standing high bid, initial maximum eligibility, activity rule waivers, and withdrawal allowances for all other bidders are restored to beginning auction levels, except for those nationwide bidders that have withdrawn from the auction. Once a nationwide bidder is out of the auction, it cannot have its eligibility restored. Eligibility restoration does not affect the activity requirements of the different stages. For example, if a bidder has eligibility restored due to the withdrawal from the auction of a nationwide bidder, the bidder with restored eligibility would be subject to the activity rule of whatever stage the auction is in when the eligibility is restored. Finally, we reiterate that the activity rules for Stages I, II, and III do not apply to nationwide bidders. A nationwide bidder will not be allowed to be active on anything less than all licenses comprising the 30 megahertz nationwide aggregation. The bidder must be active on every license in every round, or employ an activity rule waiver.

125. Also, PSINet seeks clarification on two items. First, PSINet asks that the Bureau confirm that the withdrawal payment would be calculated as the difference between the sum of the withdrawn bids and the sum of the ''subsequent winning bids'' on the withdrawn licenses. PSI Net is correct. The withdrawal payment would be calculated based on the amount of the winning bids and not based upon the subsequent high bids in the next round of bidding. (*See Auction No. 31 Comment Public Notice* at 10.) PSI Net also seeks clarification that the withdrawal payment for a nationwide aggregation will be calculated using the sum of all twelve withdrawn bids and the sum of subsequent bids. In that regard, PSINet is incorrect. The withdrawal payment will be calculated using the sum of only the withdrawn standing high bids and the sum of the

subsequent winning bids for those licenses. (*See Auction No. 31 Comment Public Notice* at 10.)

viii. Round Results

126. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 31 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

ix. Auction Announcements

127. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as on the Internet.

x. Maintaining the Accuracy of FCC Form 175 Information

128. As noted in Section II.E., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revisions to exhibits. Filers must make these changes on-line, and submit a letter to: Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

A separate copy of the letter should be mailed to Howard Davenport, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport, Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

129. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing bid withdrawal payments due.

130. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in ''Bid Removal and Bid Withdrawal,'' Section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

131. Within ten business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each 700 MHz band license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

132. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

133. All applicants that submitted upfront payments but were not winning bidders for a 700 MHz license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

134. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number (''TIN''), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Shirley Hanberry 445 12th Street, SW, Room 1–A824, Washington, DC 20554.

135. Bidders are encouraged to file their refund information electronically using the Refund Information portion of the FCC Form 175, but bidders can also fax their request to the Auctions Accounting Group at (202) 418–2843. Once the request has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Michelle Bennett or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Louis Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–5544 Filed 3–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Thursday, March 9, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's resolution and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, DC.

Requests for further information concerning the meeting may be directed

to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 6, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–5750 Filed 3–6–00; 1:23 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 207–011649–002.

Title: Interocean Lines, Inc. and Trinity Shipping Line, S.A. Joint Operating Agreement.

Parties: Interocean Lines, Inc., Trinity Shipping Line, S.A.

Synopsis: The proposed modification: (1) Deletes reference to specific vessels to be employed, (2) Specifies that two vessels of approximately 520 TEU capacity and a service speed of approximately 16 knots will be employed, (3) Provides that if a third vessel is employed, the parties shall share operating costs thereof, (4) That automatic renewal shall be for periods of one year, and (5) Colombia is added to the itinerary.

Agreement No.: 232–011694.

Title: CMA CGM/China Shipping Container Lines Cross Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM S.A. (''CMA CGM'') China Shipping Container Lines.

Synopsis: Under the proposed agreement, the parties agree to share space and to operate a slot exchange agreement on vessels operating in the trades between the U.S. East Coast and ports in Panama, Jamaica and ports in the Far East in the Japan/Hong Kong range. It also authorizes the parties to engage in certain cooperative activities involving chartering of space, facilities and supplies.

Agreement No.: 232–011695.

Title: CMA CGM/Norasia Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM Norasia Lines (Malta) Ltd.

Synopsis: The proposed Agreement would permit the parties to share space and exchange slots aboard their vessels in the trade between United States West Coast ports, and inland U.S. points via such ports, and ports and points in the Far East, Sri Lanka, and the Eastern and Western Mediterranean Sea. It would also permit the parties to agree on the number and size of vessels to be operated in the trade and to coordinate their vessel services.

Dated: March 3, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–5655 Filed 3–7–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as a Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicant:

Martin E. Button, Inc., 55 New Montgomery Street, Suite 400, San Francisco, CA 94105, Officers: Jennifer Rixford, Secretary, (Qualifying Individual), Martin E. Button, President

Dated: March 3, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–5654 Filed 3–7–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11 a.m., Monday, March 13, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5673 Filed 3–3–00; 4:13 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed collections; Comment Request

The Department of Health and Human Services (DHHS), Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. Survey of Grant Recipients—NEW—The Office of Grants and Acquisition Management (OGAM) in compliance with Executive Order 12862 conduct surveys to collect data from grant recipients regarding the performance of the grants management operations of the Department's Operating Divisions (OPDIVs) and their awarding components. These surveys will provide OGAM and OPDIVs and their awarding components a necessary tool for the evaluation of the awarding components' operational performance. Respondents: State and local government, Businesses or other for profit organizations, non-profit institutions, small businesses; *Total Annual Number of Respondents:* 2,667; *Frequency of Response:* one time; *Average Burden per Response:* 15 minutes; Estimated Annual Burden 667 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: March 1, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–5636 Filed 3–7–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

NAME: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

TIMES AND DATES: 1 pm—8:30 p.m., March 22, 2000. 9 am—5 p.m., March 23, 2000.

PLACE: The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020, telephone 513/367–5610.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

BACKGROUND: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions form the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

PURPOSE: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

MATTERS TO BE DISCUSSED: Agenda items include presentations from ATSDR on the draft public health assessment and the Fernald uranium recycle sources and potential exposures at Fernald from major constituents; a report from ATSDR on the Health Professionals Seminar; a progress report from the University of Cincinnati on radon and cigarette smoking assessment in Fernald workers; a presentation on cancer mortality due to radiation and chemical exposure among Fernald workers; and a discussion of the evaluation project progress.

Agenda items are subject to change as priorities dictate.

CONTACT PERSONS FOR MORE INFORMATION: Mike R. Donnelly, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE, M/S E–39, Atlanta, Georgia 30333, telephone 404/639–2550, fax 404/639–2575.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: March 2, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–5584 Filed 3–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Grant Application and Budget Instrument

OMB No.: 0970–0207

Description: The Head Start program is promulgating a Head Start Grant Application and Budget Instrument to standardize the grant application information which is also instituting a three year grant funding cycle so that applications will only submit full applications in their first year of their three year funding cycle. In addition, the Grant Application and Budget Instrument will be available on a data disk and can be transmitted electronically to Regional Offices. The Administration Children, Youth and Families believes that, in promulgating this application document, the process of applying for grants for the Head Start program will be more efficient for the applicants.

Respondents: Head Start Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start GABI	1,513	1	33	49,929

Estimated Total Annual Burden Hours: 49,929.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: March 2, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–5540 Filed 3–7–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00B–0108]

Microbiology Devices; Reclassification of Fully Automated Short-Term Incubation Cycle Antimicrobial Susceptibility Devices From Class III to Class II

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of panel recommendation.

SUMMARY: The Food and Drug Administration (FDA) is announcing for public comment the recommendation of the Microbiology Devices Panel (the Panel) to reclassify the fully automated short-term incubation cycle antimicrobial susceptibility devices from class III to class II. The Panel made this recommendation after reviewing the reclassification petition submitted by bioMeAE1rieux Vitek, Inc., and other publicly available information. FDA is also announcing for public comment its tentative findings on the Panel's recommendation. After considering any public comments on the Panel's recommendation and FDA's tentative findings, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on the reclassification petition will be announced in the **Federal Register**. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that would serve as a special control for the reclassified device.

DATES: Submit written comments by June 7, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), and the FDA Modernization Act of 1997 (Pub. L. 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified postamendments devices is governed by section 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for the issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the

proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under section 513(f)(2)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a device classification panel. The Panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

II. Regulatory History of the Device

The fully automated short-term incubation cycle antimicrobial susceptibility device intended for determining the susceptibility patterns of microorganisms to various antimicrobial agents is a postamendments device classified into class III under section 513(f)(1) of the act. Prior to 1976, antimicrobial susceptibility disks were regulated as drugs. In 1976, with the passage of the 1976 amendments, all antimicrobial susceptibility products were considered transitional devices and automatically classified into class III. In 1978, the Vitek system for antimicrobial susceptibility testing was approved. In 1980, the antimicrobial susceptibility test (AST) disks device and the AST powder device were classified into class II. The semi-automated and automated methodologies were subject to class III controls because they were not substantially equivalent to traditional antibiotic disks and powders. In 1983, FDA denied a petition requesting the AST disks devices to be reclassified into class I. In 1984, the semi-automated and automated AST methodologies were reclassified into class II. The petition did not address the fully automated short-term incubation cycle methodologies. On July 2, 1997, FDA received a petition from bioMeAE1rieux Vitek, Inc., requesting reclassification of the fully automated short-term incubation cycle antimicrobial susceptibility devices from class III to class II under section 513(f)(2) of the act and § 860.134, based on information submitted in the petition.

Consistent with the act and the regulation, FDA referred the petition to the Panel for its recommendation on the requested change in classification.

III. Device Description

The fully automated short-term incubation cycle antimicrobial susceptibility device is intended to determine, in less than 16 hours, the antimicrobial susceptibility of nonfastidious aerobic and/or facultative anaerobic bacteria to FDA-approved antimicrobial agents. These devices are based on optical detection of growth of bacterial isolates in media with selected antimicrobial concentrations during a short term, less than 16 hours, incubation cycle. Test results are used as an aid for the physician in making therapeutic decisions involving the administration of antimicrobial drugs.

IV. Recommendations of the Panel

At a public meeting on February 13, 1998, the Panel unanimously recommended that the fully automated short-term incubation cycle antimicrobial susceptibility devices be reclassified from class III to class II. The Panel believes that class II with special controls would provide reasonable assurance of the safety and effectiveness of the device. Those special controls include: (1) The use of updated and appropriate ''challenge strains,'' (2) the use of a nephelometer for preparing the inoculum, (3) application of ''acceptable error'' as a range with confidence intervals, (4) identification of a predicate device for comparative clinical performance testing, and (5) guidelines in the FDA guidance document entitled ''Review Criteria for Assessment of Antimicrobial Susceptibility Devices.'' In addition, the Panel believes there is the need for a postmarketing action plan, which the Panel called ''postmarket surveillance,'' to review problems as they arise. (See further discussion under section IX of this document).

The Panel stated that special controls will diminish some of the risks associated with the inappropriate use of antimicrobial agents, including the potential risk of death associated with an ineffective antimicrobial agent.

V. Risks to Health

After considering the information discussed by the Panel during the meeting on February 13, 1998, the published literature, and the Medical Device Reporting (MDR) system reports, FDA believes the following risks are associated with the use of fully automated short-term incubation cycle antimicrobial susceptibility devices.

When an antimicrobial agent result is erroneously reported to the clinician as ''sensitive'' and in reality is ''resistant,'' the patient may be treated inappropriately and inadvertently subjected to an exacerbation of the infection, drug reaction, an extended hospital stay, collateral infections, or possibly death.

When an antimicrobial agent result is erroneously reported to the clinician as ''resistant'' and in reality is ''sensitive,'' the appropriate treatment may be delayed with a similar potential of severe sequelae.

VI. Summary of Reasons for Recommendation

Based on the Panel members' personal knowledge and clinical experience with the device, the data and information contained in the petition, the information provided by FDA, and the open discussions during the Panel meeting, the following reasons were given by the Panel in support of its recommendation to reclassify the fully automated short-term incubation cycle antimicrobial susceptibility device for use in the rapid determination of the in vitro susceptibility of nonfastidious aerobic and facultative anaerobic organisms to antimicrobial agents from class III into class II:

1. The safety and effectiveness of the fully automated short-term incubation cycle antimicrobial susceptibility device has become well-established since approval of the first device in 1978.

2. The establishment of special controls, in addition to general controls, provides reasonable assurance of the safety and effectiveness of the fully automated short-term incubation cycle antimicrobial susceptibility device.

3. The rate of serious complications from the fully automated short-term incubation cycle antimicrobial susceptibility device is low and can be effectively minimized by: (a) Evaluating the system with updated challenge strains of organisms, as well as those organisms that are appropriate to the antimicrobial being tested; (b) using a nephelometer for preparing the inoculum; (c) using application of ''acceptable error'' as a range with confidence intervals; (d) conducting adequate and appropriate clinical testing; and (e) enforcing labeling restrictions and ensuring adherence to the guidelines described in the FDA guidance document entitled ''Review Criteria for Assessment of Antimicrobial Susceptibility Devices.''

The Panel has identified the risks to health regarding the use of the fully automated short-term incubation cycle AST system as the reporting of erroneous results. Insufficient testing of each unique antimicrobial agent with an inappropriate clinical and challenge organism, the use of an uncalibrated

inoculum, or a nonstandardized acceptable error endpoint can result in such erroneous reports.

The Panel believes that the fully automated short-term incubation cycle AST device should be reclassified into class II because special controls provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

VII. Summary of Data Upon Which the Panel Recommendation is Based

Based on the information discussed by the Panel during the February 13, 1998, Panel meeting, the published literature, the information presented in the petition, and the literature searches done by FDA, the Panel believes that there is reasonable knowledge of the benefits of the device when used for the determination of antimicrobial susceptibilities. The fully automated short-term incubation cycle antimicrobial susceptibility device provides a more timely laboratory report and clinical intervention. The sooner the clinician has the results of susceptibility testing, providing controls are in place to minimize erroneous results, the sooner the patient can be placed on appropriate therapy, thereby increasing the probability of faster recovery.

Automated antimicrobial susceptibility devices have been in the marketplace over 25 years. There is significant scientific and medical information available regarding the nature, complexity, and problems associated with these devices. With the short-term incubation cycle devices, the error rate tends to be higher because of decreased incubation times and the use of algorithms to determine resistance. Because of this, the results can more profoundly affect the clinical decision. This occurs frequently with certain organisms *pneumoniae*, and specific antimicrobial agent-bacterial pathogen combinations.

FDA believes that the special controls discussed in section VIII of this document are capable of providing reasonable assurance of the safety and effectiveness of the fully automated short-term incubation cycle antimicrobial susceptibility device with regard to the identified risks to health with the use of this device.

VIII. Special Controls

In addition to general controls, FDA believes that a special control should be established to minimize the risks to health identified with the use of this device. The special control will be an FDA guidance document as described below.

A. FDA Guidance Document

The FDA guidance document that would serve as a special control provides information to help manufacturers address the risks identified by the Panel. The guidance document describes a means by which fully automated short-term incubation cycle antimicrobial susceptibility devices may comply with the requirement of special controls for class II devices. Designation of this guidance document as a special control means that manufacturers attempting to establish that their device is substantially equivalent to a predicate device must demonstrate that the proposed device complies with either the specific recommendations of this guidance or some alternative control that provides equivalent assurances of safety and effectiveness. Fully automated short-term incubation cycle antimicrobial susceptibility devices remain subject to premarket approval unless and until reclassified by FDA.

Adherence to the revised FDA guidance document entitled ''Review Criteria for Assessment of Antimicrobial Susceptibility Devices'' (Ref. 1) can control the risks associated with inappropriate challenge strains being used in clinical testing, nonstandardized preparation of inoculum, varying interpretations of error ranges, and clinical performance testing. Each of these risks is addressed in the guidance document.

1. Appropriate Challenge Strains

Inappropriate testing, too few samples, and lack of attention to the specific antimicrobial/organism relationships that were approved by the Center for Drug Evaluation and Research, should be avoided. In the process of doing preclinical and clinical studies, testing of the device with well-characterized strains may detect possible areas where the device needs improvement, as well as providing a greater confidence in the reporting of results with the use of the device.

2. Standardized Preparation of Inoculum

An acknowledged source of error in all systems is the use of an inappropriate inoculum. If the inoculum density falls outside of the established range, the results may provide inaccurate reports of ''sensitive'' or ''resistant.'' The use of a nephelometer alleviates visual acuity and ambiguity in determining a specific turbidity endpoint. As discussed in the guidance, the National Committee for Clinical Laboratory Standards (NCCLS) *Methods for Dilution Antimicrobial Susceptibility Tests for Bacteria That Grow Aerobically* (M7–A4), recommends use of a nephelometer as an option for preparing the inoculum.

3. Application of ''Acceptable Error'' as a Range With Confidence Intervals

By using an acknowledged standard (e.g., 95 percent confidence intervals for agreement and error rates that must fall within specified bounds), a consistent threshold can be universally applied.

4. Appropriate Clinical Performance Testing

FDA approves antimicrobial agents with specific indications for use. Many antimicrobial agents will show activity with only ''selected'' organisms. When manufacturers are performing clinical tests on their systems, it is essential to test only those organisms specifically identified in the ''Indication for Use'' statement of the approved drug. These are the organisms for which the clinician will require susceptibility results for treating the patient.

5. Reference to the Current Guidelines Established in Standards Published by the NCCLS

The quality of the device is enhanced by conforming to accepted standards. Standards listed in the FDA guidance document include the most recent version of *Performance Standards for Antimicrobial Disk Susceptibility Tests* (M2–A–), *Methods for Dilution Antimicrobial Susceptibility Tests for Bacteria that Grow Aerobically* (M7–A–), *Development of In Vitro Susceptibility Criteria and Quality Control Parameters* (M23–A–), and *Performance Standards for Antimicrobial Susceptibility Testing* (M100–A–).

IX. FDA's Tentative Findings

FDA agrees with the Panel's recommendation. However, FDA interprets the term, ''postmarket surveillance,'' as used by the Panel, to mean continuation of the industry-wide activity already in place to review any problems with these devices as they develop. Many laboratories participate in various recognized surveys, which are widely subscribed to and sent out regularly. The results of these surveys are reviewed, tabulated, often listed by device, and published. For example, the College of American Pathology provides an extensive survey program. The Centers for Disease Control and Prevention do periodic testing to evaluate potential problems with susceptibility testing and disseminate

the results of that research. There is also the Med-Watch program as well as the Medical Device Reporting system to identify problems or trends associated with these devices. The agency believes the above survey, testing, and reporting programs provide adequate postmarket surveillance. The development of an FDA guidance as a special control will minimize the major sources of erroneous reporting associated with the fully automated short-term incubation cycle antimicrobial susceptibility device. Because special controls, in addition to general controls, would provide reasonable assurance of safety and effectiveness, the device should be classified into class II. There is sufficient information to establish special controls to provide such assurance.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday:

1. FDA Guidance Document, ''Review Criteria for Assessment of Antimicrobial Susceptibility Devices,'' 2000 revision.

2. NCCLS Approved Standard, M2 (most recent approved supplement), *Performance Standards for Antimicrobial Disk Susceptibility Tests,* Wayne, PA.

3. NCCLS Approved Standard, M7 (most recent approved supplement), *Methods for Dilution Antimicrobial Susceptibility Tests for Bacteria That Grow Aerobically,* Wayne, PA.

4. NCCLS Approved Standard, M100 (most recent approved supplement), *Performance Standards for Antimicrobial Susceptibility Testing,* Wayne, PA.

5. NCCLS Approved Standard, M23 (most recent approved supplement), *Development of In Vitro Susceptibility Testing Criteria and Quality Control Parameters,* Wayne, PA.

6. Transcript of the Microbiology Devices Panel Meeting, February 13, 1998.

XI. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification 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.

XII. Analysis of Impacts

FDA has examined the impacts of the notice under Executive Order 12866 and the Regulatory Flexibility Act (Public Law 96–354) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). 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 reclassification action is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the reclassification action 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. Reclassification of the device from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this reclassification action, if finalized, will not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

XIII. Request for Comments

Interested persons may, on or before June 7, 2000, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 14, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–5523 Filed 3–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0109]

Draft Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices.'' This draft guidance is neither final nor is it in effect at this time. This guidance document would serve as a special control for the reclassification of fully automated short-term incubation cycle antimicrobial susceptibility devices from class III to class II.

DATES: Submit written comments concerning this guidance by June 7, 2000.

ADDRESS: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Dockets Management Branch, (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background

On July 2, 1997, FDA received a petition from bioMerieux Vitek, Inc., requesting reclassification of the fully automated short-term incubation cycle antimicrobial susceptibility devices from class III (premarket approval) to class II (special controls). Based on the petition, a meeting of the Microbiology Devices Panel (the Panel) was convened on February 13, 1998, to obtain the Panel's recommendation on the requested change in classification. The Panel unanimously recommended that fully automated short-term incubation cycle antimicrobial susceptibility devices be reclassified from class III to class II. This guidance document, which takes into consideration the Panel's recommendations and FDA's review experience, would be the special control for the reclassified device.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on fully automated short-term incubation cycle antimicrobial susceptibility devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. Designation of this guidance document as a special control means that manufacturers attempting to establish that their device is substantially equivalent to a predicate device must demonstrate that the proposed device complies with either the specific recommendations of this guidance or some alternative control that provides equivalent assurances of safety and effectiveness.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive a copy of the draft guidance entitled ''Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (631) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes ''Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices'' will also be available at http://www.fda.gov/cdrh.

IV. Comments

Interested persons may, on or before June 7, 2000, submit to Docket Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 9, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–5524 Filed 3–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0357]

Draft Guidance for Industry on OTC Treatment of Herpes Labialis With Antiviral Agents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''OTC Treatment of Herpes Labialis with Antiviral Agents.'' Recent interest in marketing antiviral agents over-the-counter (OTC) to treat herpes labialis has raised public health concerns. This draft guidance summarizes the agency's current thinking on why it does not favor the OTC treatment of herpes labialis with antiherpes agents at this time. The guidance also describes issues that sponsors should consider before submitting a marketing application for an OTC antiviral product to treat herpes labialis.

DATES: Submit written comments on the draft guidance by May 8, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at hppt://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph G. Toerner, Center for Drug Evaluation and Research (HFD–530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2330.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''OTC Treatment of Herpes Labialis with Antiviral Agents.'' This draft guidance summarizes the agency's current thinking on the OTC use of antiviral agents to treat herpes labialis. The agency believes that, until other safe

antiherpes agents that lack cross-resistance to the currently available class become available, issues relating to misuse and resistance will need to be thoroughly evaluated in an actual use setting of an antiviral agent for recurrent herpes labialis, particularly if OTC marketing is proposed sometime in the future. At present, based on a public health-based risk/benefit assessment with respect to treatment of herpes labialis, the agency concludes that antiherpes agents should not be made available OTC.

This draft guidance is being issued consistent with FDA's good practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on OTC treatment of herpes labialis with antiviral agents. Its does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5525 Filed 3–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Behavioral Research in Cancer Control.

Date: March 27, 2000.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Olivia T. Preble, Phd, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8052, Rockville, MD 20892–7405, 301/594–2501.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research 93.394, Cancer Detection and Diagnosis Research 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5657 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for the Molecular Analysis of Cancer and their Applications.

Date: March 22–24, 2000.

Time: 7:00 p.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5658 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Communication and Interactive Media Technology.

Date: March 23–24, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C Pegues, PhD, Scientific Review Administrator, Special Review, Referral, and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8084, Bethesda, MD 20892, 301/594–1286.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5659 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C. The discussions could reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of discussions related to personnel and confidential administrative information would be likely to significantly frustrate the subsequent implementation of recommendations.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: March 23–24, 2000.

Open: March 23, 8:30 am to 4:30 pm. March 24, 8:30 am to 12:00 pm.

Agenda: Report of the Director, NCI; Ongoing and New Business, Reports of Program Review Group(s), Budget Presentation, Reports of Special Initiatives, and RFA Concept Reviews.

Closed: March 23, 4:30 pm to 6:00 pm.

Agenda: To review and evaluate personnel and programmatic issues.

Place: National Cancer Institute, 9000 Rockville Pike, building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Deputy Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Building, Room 8032, 6116 Executive Boulevard, Bethesda, MD 20892, (301) 496–4218.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and prevention research; 93.394, Cancer Detection and Diagnosis Research, 93,395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 00–5660 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Review and Analysis of Tobacco Industry Documents.

Date: March 21, 2000.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8070, Rockville, MD 20892–7405, 301/496–7987.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5662 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, February 22, 2000, 1 PM to February 22, 2000, 5 PM, 6116 Executive Boulevard, 8th Floor, Bethesda, MD 20892 which was published in the **Federal Register** on February 16, 2000, 659279.

The Telephone Conference Call meeting will be held on March 15, 2000 from 3 PM to 5 PM. The meeting is closed to the public.

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5663 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Basic Bio-Behavioral Research on Cancer Related Behaviors.

Date: March 10, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg, Hilton, Gaithersburg, MD 20878.

Contact Person: C.M. Kerwin, Phd., Scientific Review Administrator; Special Review, Referral and Resources Branch; Division of Extramural Activities; National Cancer Institute; National Institutes of Health; 6116 Executive Boulevard, Room 8086, Rockville, MD 20892–7405, 301/496–7421.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5664 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Wireless Telemetry of EKG and Respiratory Information from within an MRI Scanner.

Date: March 8, 2000.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Rockledge Center II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David T. George, PhD, Scientific Review Administrator, Review Branch, NIH, NHLBI, DEA, Rockledge II, 6701 Rockledge Drive, Suite 7188, Bethesda, MD 20892–7924, (301) 435–0280.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 25, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5661 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: March 19–21, 2000.

Time: 7:30 p.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Four Points Hotel, 530 West Pico Blvd., Santa Monica, CA 90405.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 29, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5665 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Population Research Subcommittee.

Date: April 28, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jon M. Ranhand, Phd., Health Scientist Administrator, Division of Scientific Review, National Institute of Child

Health and Human Development, 6100 Executive Blvd., Rm 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5667 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2(M5)S.

Date: March 6, 2000.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20982, (Telephone Conference Call).

Contact Person: Shan S. Wong, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS43H, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–5(M2)P.

Date: March 29–31, 2000.

Time: 7:30 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Lodge at Torrey Pines, 11480 North Torrey Pines Road, La Jolla, CA 92037.

Contact Person: Francisco O. Calvo, PhD, Deputy Chief, Review Branch, DEA, NIDDK, National Institutes of Health, Room 6AS37D, Bldg. 45, Bethesda, Md 20892, 301–594–8897.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–4(M2)P.

Date: April 12–13, 2000.

Time: 5:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Le Montrose Suite Hotel, 900 Hammond Street, West Hollywood, CA 90069.

Contact Person: William E. Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

(Catalog of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5668 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6(M5) B.

Date: March 7, 2000.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, NIDDK/DEA/Review Branch, 45 Center Drive, 6AS–37A, Bethesda, MD 20892–6600, (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2 (M2)B.

Date: March 10, 2000.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIH/NIDDK/Review Branch, Natcher Building, 45 Center Drive, Suite 6AS43H, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shan S. Wong, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS43H, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Disease Special Emphasis Panel, ZDK1 GRB–6(M3)B.

Date: March 13, 2000.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, NIDDK/DEA/Review Branch, 45 Center Drive, 6AS–37A, Bethesda, MD 20892–6600, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–1 (M2) B.

Date: March 15, 2000.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22203.

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–43A, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6 (M2) B.

Date: March 17, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 29, 2000.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5669 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7(M4)B.

Date: March 23, 2000.

Time: 3:00 p.m. to 5:00 p.m.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20982, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS25F, National Institutes of Health, Bureau, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 92.848, Digestic Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5670 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 9, 2000.

Time: 5:30 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn; Bethesda, MD 20814.

Contact Person: Nancy Shinowara, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, shinowan@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 15, 2000.

Time: 1:45 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Nabeeh Mourad, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892 (301) 435–1222.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 15, 2000.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892.

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientic Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892 (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 16, 2000.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Angela M. Pattatucci, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.

Contact Person: Lawrence N. Yager, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, (301) 435–0903, yageri@csr.hih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: March 16–17, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221, laingc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: March 16–17, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Initial Review Group, Biological Sciences Subcommittee 1.

Date: March 16–17, 2000.

Time: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW, Washington, DC 20037.

Contact Person: Nancy Pearson, PhD, Chief, Genetic Sciences Integrated Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 17, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Fortune Room, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–0676.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 17, 2000.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Nancy Pearson, PhD, Chief, Genetic Sciences Integrated Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2112, MSC 7890, Bethesda, MD 20892, (301) 435–1047, pearsonn@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 19–20, 2000.

Time: 7 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 29, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5866 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Correction to a Fiscal Year (FY) 2000 Funding Opportunities Notice

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Correction to a Notice of Funding Availability regarding the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), grants to expand substance abuse treatment capacity in targeted areas of need.

SUMMARY: This notice is to inform the public that there is a correction to the SAMHSA/CSAT Program Announcement PA 00–001 entitled Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need (short title: Targeted Capacity Expansion), published in the **Federal Register** on January 18, 2000 (Volume 5, Number 11, pages 2634–2636). On page 2636, column 1, the Program Contact information for questions concerning program issues should be changed from Clifton Mitchell, Branch Chief at (301) 443–8404 to Ken Robertson, Public Health Advisor, at (301) 443–7612.

The full Program Announcement and the addendum that includes the corrected section is available via the SAMHSA web site at *www.samhsa.gov,* or from the National Clearinghouse for Alcohol and Drug Information (telephone: 800–729–6686).

Dated: March 2, 2000.

Richard Kopanda,

Executive officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–5528 Filed 3–7–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–033–00–1230–00–OHV1]

Temporary Closure of Public Lands: Nevada, Carson City District

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of affected public lands in Lyon, Storey, Churchill, Carson, Douglas, Mineral and Washoe Counties on and adjacent to Off Highway Vehicle race course routes.

Races are conducted along dirt roads, trails and washes approved for such use through the Special Recreation Use Permit application process. Events occur from February through November, 2000. Closure period is generally from 6:00 a.m. race day until race finish.

1. February 20: Lemmon Valley MX Area—Permit NV–030–99502; Washoe Co., T21N R19E S8
2. March 12: Lemmon Valley Hare Scramble—Permit NV–030–00518; Washoe Co., T21N R19E S8 & S16
3. March 19: Lemmon Valley MX Area—Permit NV–030–99502; Washoe Co., T21N R19E S8

4. April 15: Lemmon Valley MX Area—Permit NV–030–99502; Washoe Co., T21N R19E S8
5. May 13 & 14: Virginia City Grand Prix—Permit NV–030–99504A; Storey Co., T 16 & 17N R21E
6. May 28: Yerington 300 Desert Race—Permit NV–030–96510A; Lyon Co.: T13N R24–26E; T14N R24,25E T15N R24E; T16N R24E;
7. July 12: Day 4 of Nevada 2000 OHV Race—Permit NSO–99–001:Churchill Co., Enter CCFO east of Hole-in-the-Wall: T23N R37–40E; T22N R36,38–40E; T21N R35E; T20N R34,35E; T19N R34,35E; T18N R30–34E; End at Salt Wells
8. July 13: Day 5 of Nevada 2000 OHV Race–Permit NSO–99–001:Lyon Co., Start south of Dayton: T16N R21,22,24–27E; T15N R22–24E; T14N R23,24E; Churchill Co., T16N R27–30E; T15N R31,32E; Mineral Co., T14N R31½,32E T11N R30,31E; T10N R30,31E; T9N R30–31½,33E; T8N R31½–35E; T7N R35E; T6N R35–37E; T5 R36E Leaves CCFO south of Blue Link Spring.
9. July 29: Top Gun Desert Race—Permit NV–030–96510B: Churchill Co., T16N R28–33E; T17N R30,31E; 31,32E; T
10. October 29: Hungry Valley Hare Scramble—Permit NV030–00016: Washoe Co., Within Hungry Vly ORV Area
11. November 12: Hare Scramble—Permit NV–99504C; Lyon or Churchill Co.

SUMMARY: The Assistant Manager, Non-Renewable Resources announces the temporary closure of selected public lands under his administration. This action is taken to provide for public safety and to protect adjacent resources.

EFFECTIVE DATES: Listed above. Events may be canceled or rescheduled.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Outdoor Recreation Planner, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701, Telephone: (775) 885–6161.

SUPPLEMENTARY INFORMATION: Bureau lands to be closed to public use include the width and length of those roads and trails identified as the race route by colorful flagging and directional arrows attached to wooden stakes. A map of each closure area may be obtained at the contact address. The authorized applicants are required to clearly mark and monitor the event routes during the closure periods.

Public uses generally affected by a Temporary Closure include: road and trail uses, camping, shooting of any kind of weapon including paintball, and public land exploration.

Spectator and support vehicles may be driven on open roads only. Spectators may observe the races from certain locations as directed by event and BLM officials.

Exemptions: Closure restrictions do not apply to race officials, medical/rescue, law enforcement and agency personnel monitoring the event.

Authority: 43 CFR 8364 and 43 CFR 8372.

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Dated: February 10, 2000.

Charles Pope,

Acting Assistant Manager, Non-renewable Resources.

[FR Doc. 00–5533 Filed 3–7–00; 8:45 am]

BILLING CODE 4310–HC–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

March 16, 2000 Public Hearing; Sunshine Act Notice

TIME AND DATE: Thursday, March 16, 2000, 2:00 PM.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Hearing OPEN to the Public at 2:00 PM.

PURPOSE: In conjunction with the quarterly meeting of OPIC's Board or Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURE: Individuals wishing to make statements or present reports must provide advance notice to OPIC's Corporate Secretary on or before March 13, 2000. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a prepared statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 PM., March 13, 2000. Prepared statements must be typewritten, double-spaced and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via email at cdown@opic.gov.

Dated: March 3, 2000.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 00–5716 Filed 3–3–00; 4:55 pm]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree in *United States* v. *T. Frank Flippo & Sons, LLC,* Civil Action No. 3:00–CV–58 (E.D. Va.) was lodged with the court on February 4, 2000.

The proposed consent decree resolves the claims of the United States against defendant T. Frank Flippo & Sons, LLC, under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. § 9607, for past response costs at the HH Burn Pit Superfund Site in Hanover County, Virginia. The decree obligates the Settling Defendant to reimburse $35,000 of the United States' past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. and should refer to *United States* v. *Frank Flippo & Sons, LLC,* DOJ Ref. #90–11–3–1408/1.

The proposed consent decree may be examined and copied at the Office of the United States Attorney, Main Street Centre, 600 E. Main Street, Richmond, VA 23219; or at the Region III Office of the Environmental Protection Agency, c/o Andrew Goldman, Assistant

Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box No. 7611, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library. A copy of the exhibits to the decree may be obtained from the same source for an additional charge.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–5534 Filed 3–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Time for Comments Relating to the Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act, and the Resource Conservation and Recovery Act

Notice is hereby given of an extension of time under which the Department of Justice will receive comments relating to the proposed Consent Decree in *United States and State of Idaho* v. *Union Pacific Railroad Co.,* Case No. 99–606–N–EJL (D. Idaho) and *Coeur d' Alene Tribe* v. *Union Pacific Railroad Co.,* Case No. CV 91–0342–N–EJL (D. Idaho). The proposed Consent Decree was lodged with the United States District Court for the District of Idaho on December 23, 1999 and previously noticed in the **Federal Register** on January 20, 2000 (65 FR 3249). The earlier noticed comment period would have expired on February 22, 2000, but comments will now be considered if received by March 8, 2000.

The Consent Decree settles claims by the United States, the State of Idaho, and the Coeur d'Alene Tribe (Tribe) asserted against Union Pacific Railroad Company (Union Pacific) under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607, and Section 311 of the Clean Water Act (CWA), 33 U.S.C. 1321. The Complaint of the United States and the State seeks injunctive relief requiring Union Pacific to implement the non-time-critical removal action selected by EPA, the State and the Tribe, for most of Union Pacific's 71.5-mile-long railroad right of way between Mullan and Plummer, Idaho (the ROW) and certain adjacent areas (collectively the Project Area) in the Coeur d'Alene Basin in northern Idaho. The Plaintiffs' Complaints also seek past and future CERCLA response costs incurred by EPA, the Departments of the Interior (Interior) and Agriculture (Agriculture), the State, and the Tribe in connection with the Project Area and damages for injuries to natural resources throughout the Coeur d'Alene Basin.

The Consent Decree requires Union Pacific to implement the response action selected for the Project Area and specified additional work needed to convert the ROW into a biking/hiking trail for public use. The estimated total cost of this work is over $25 million. In addition, Union Pacific agrees to pay (1) the past response costs incurred by the United States, the State and the Tribe in connection with the negotiations and the Engineering Evaluation and Cost Analysis (EE/CA) needed to select the response action (approximately $600,000 for the United States); (2) $2,730,000 to the State and the Tribe, primarily for their expected future costs of maintaining public amenities along the biking/hiking trail; (3) $35,000 to fund educational activities to be conducted by Plaintiffs as part of the Response Action; (4) up to $25,000 per year for 10 years to the Tribe for costs in incurs for operation and maintenance of the Chatcolet Bridge; (5) the future response costs of all three governments for oversight of the removal action; and (6) $2,000,000 to Interior, Agriculture, and the Tribe for natural resource damages.

In exchange, Union Pacific will receive a covenant not to sue for response actions and costs relating to the Project Area (primarily the ROW) pursuant to Sections 106 and 107(a) of CERCLA, Section 311 of the CWA, and Section 7003 of RCRA. Union Pacific will also receive a covenant not to sue for natural resource damages under CERCLA and the CWA in the ''Coeur d'Alene Basin Environment,'' an area that includes the watersheds of both the North and South Forks of the Coeur d'Alene River, the main stem of the Coeur d'Alene River, and Lake Coeur d'Alene.

Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611, should refer to *United States and State of Idaho* v. *Union Pacific Railroad Co.,* Case No. 99–606–N–EJL (D. Idaho), D.J. Ref. No. 90–11–3–128/1, and should be received by March 8, 2000. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, First Interstate Center, 877 West Main Street, Suite 201, Boise, Idaho 83702 and at North Idaho College Library, 1000 West Garden Avenue, Coeur d'Alene, Idaho 83814. A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $255.75 (25 cents per page reproduction cost, with exhibits) payable to the Consent Decree Library. If requesting a copy of the Consent Decree exclusive of exhibits, please enclose a check in the amount of $27.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–5535 Filed 3–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Cancellation of Solicitation for a Cooperative Agreement—Community Restorative Justice Outcomes/ Measurements and Evaluations

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Cancellation of Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections announces the cancellation of the Solicitation: Community Restorative Justice Outcomes/ Measurements and Evaluation. The NIC Application Number is 00A14, 65 Fr 6396 (February 9, 2000).

There are no plans to reannounce at this time.

Dated: March 1, 2000.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 00–5461 Filed 3–7–00; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1261]

Announcement of the Availability of the National Institute of Justice Solicitation for Drug Court Research and Evaluation: National Evaluation of Juvenile Drug Courts and Research on Adult and Juvenile Drug Courts

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice solicitation ''Drug Court Research and Evaluation: National Evaluation of Juvenile Drug Courts and Research on Adult and Juvenile Drug Courts.''

DATES: Proposals must be received by close of business April 28, 2000.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice, in collaboration with the Office of Justice Programs' Drug Courts Program Office (DCPO), is soliciting proposals in two research areas: a national evaluation of six juvenile drug courts and general research and evaluation in either juvenile or adult drug courts.

There are two goals for national evaluation of six juvenile drug courts: To develop a framework for describing juvenile drug courts, and to assess the success of juvenile drug courts in relation to the framework developed. The six juvenile drug courts are located in Orlando, FL; Missoula, MT; Jersey City, NJ; Las Cruces/Anthony, NM; Dayton, OH/and Charleston, SC. These drug courts were funded in 1996–1997.

It is anticipated that one award, not to exceed $700,000, will be made for this evaluation, which is expected to be completed within 18 to 24 months.

The second area under this solicitation includes research and evaluation projects addressing issues faced by the DCPO-funded adult and/or juvenile drug courts. For these projects, four awards of up to $250,000 are expected. Each of these awards may last up to 24 months.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Drug Court Research and Evaluation: National Evaluation of Juvenile Drug Courts and Research on Adult and Juvenile Drug Courts'' (refer to document no. SL000399). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at *http://www.ncjrs.org/fedgrant.htm#nij.*

Dated: March 3, 2000.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 00–5573 Filed 3–7–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1262]

Announcement of the Availability of the National Institute of Justice Solicitation for Research and Evaluation on Violence Against Women FY2000

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice Solicitation ''Research and Evaluation on Violence Against Women FY2000.''

DATES: Proposals must be received by close of business May 15, 2000.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) is soliciting proposals for research addressing violence against women. Violence against women is defined as intimate partner violence, sexual assault, and stalking, and may include violence committed by acquaintances and strangers. Proposals are encouraged for research aimed at enhancing our knowledge of factors associated with three types of outcomes: Victim safety, offender accountability, and system accountability.

NIJ anticipates awarding up to 10 grants of varying amounts with a funding total of $2,000,000.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Research and Evaluation on Violence Against Women'' (refer to document no. SL000398). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Dated: March 3, 2000.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 00–5574 Filed 3–7–00; 8:45 am]

BILLING CODE 4410–18–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, March 16, 2000, and Friday, March 17, 2000, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC. The meeting is tentatively scheduled to begin at 10:00 a.m. on March 16, and 9:00 a.m. on March 17.

Topics for discussion include: survey results on health plans' selection and payment of health care providers, quality assurance for institutional providers, care at the end of life, improving information on the Medicare program, hospital financial performance, prescription drug coverage issues, update on payments to hospital outpatient departments, payments to teaching hospitals, and DRG refinement.

Agendas will be mailed on March 7, 2000. The final agenda will be available on the Commission's website (www.MedPAC.gov).

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 00–5541 Filed 3–7–00; 8:45 am]

BILLING CODE 6820–BW–M

MERIT SYSTEMS PROTECTION BOARD

Relocation of Board Headquarters

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB), whose headquarters is currently located at 1120 Vermont Avenue, N.W., Washington, DC 20419, is announcing that it will be relocating in June of 2000.

DATES: The exact effective date of the Board's move will be announced at a later date in the **Federal Register**.

ADDRESSES: The Board's new headquarters location will be 1615 M Street, N.W., 5th Floor, Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy or Matthew Shannon, Office of the Clerk, at (202) 653–7200.

Dated: March 1, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–5651 Filed 3–7–00; 8:45 am]

BILLING CODE 7400–01–M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Proposed New System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Privacy Act of 1974; notice of new system of records.

SUMMARY: As required by The Privacy Act of 1974, 5 U.S.C. 552a, the Merit Systems Protection Board (Board) is publishing a notice proposing establishment of a new system of records. This new records system is the Office of Appeals Counsel Case Production Data System. These records will be used to track the case production of individual employees in the Office of Appeals Counsel.

DATES: Comments must be received on or before April 7, 2000. This system of records becomes effective as proposed, without further notice, on May 8, 2000, unless comments are received which would result in a contrary determination. Comments may be mailed to the Merit Systems Protection Board, Office of the Clerk of the Board, 1120 Vermont Avenue, NW, Washington, DC 20419, or faxed to the same address on 202–653–7130. Electronic mail comments may be sent via the Internet to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Office of the Clerk of the Board, 202–653–7200.

Dated: March 2, 2000.

Robert E. Taylor,

Clerk of the Board.

MSPB/Internal–8

System Name: Office of Appeals Counsel Case Production Data System.

System Location: Office of Appeals Counsel, Merit systems, Protection Board (MSPB), 1120 Vermont Avenue, NW, Washington, DC 20419.

Categories of Individuals Covered by the System: Employees in the Office of Appeals Counsel, MSPB.

Categories of Records in the System: The system consists of information about employees in the Office of Appeals Counsel of the Board, including: Name, position title, grade, and series, organizational unit, work schedule for flexiplace employees, annual and sick leave usage, and leave taken under the Family and Medical Leave Act. The system will also contain the number of cases processed by individual employees, as well as requests for credit for hours spent performing non-case related work and requests for additional credit for time-consuming case related work. The system will also contain the names and docket numbers of certain MSPB cases.

Authority for Maintenance of the System: 5 U.S.C. 1204.

Purposes: These records are used by Board officials to track the case production of individual employees and provide an effective management tool in determining assignments, promotions, training and other personnel actions affecting employees in the office of Appeals Counsel.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses: These records and information in them may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court, or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

c. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigation, prosecution, enforcement, or implementation of a statute, rule, regulation, or order, where the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System

Storage: Records are stored in databases on a local area network server with standard password access security.

Retrievability: These records are retrieved by the names of the individuals for whom they are maintained.

Safeguards: Access to these records is limited to persons whose official duties require such access. Records are protected from unauthorized access through password identification procedures and other system-based protection methods.

Retention and Disposal: Records in this system are maintained as long as the individual is an employee of the Board. Expired records will be destroyed by deleting.

System Manager: Director, Office of Appeals Counsel, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419.

Notification Procedures: Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquiries.

Record Access Procedures: Individuals requesting access to their records should contact the Clerk of the Board. Such requests should be addressed to the Clerk of the Board, Merit Systems Protection Board, 1120

Vermont Avenue, NW., Washington, DC 20419. Requests for access to records must follow the MSPB Privacy Act regulations at 5 CFR 1205.11.

Contesting Record Procedures: Individuals requesting amendment of records should write the Clerk of the Board. Requests must follow the MSPB Privacy Act regulations at 5 CFR 1205.21.

Record Source Categories: The individual to whom the information applies; the records maintained in the Board's Office of Appeals Counsel, and records maintained by the U.S. Department of Agriculture, Animal Plant Health Inspection Service.

[FR Doc. 00–5652 Filed 3–7–00; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME:

March 16, 2000: 11:30 a.m.–12 noon—Closed Session
March 16, 2000: 12:45 p.m.–1 p.m.—Closed Session
March 16, 2000: 10 p.m.–6 p.m.—Open Session

PLACE: The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Closed Session (11:30 a.m.–12:00 noon)

—Closed Session Minutes, November 1999
—Honorary Awards
—Personnel

Closed Session (12:45 p.m.–1 p.m.)

—Awards & Agreements
—NSF Budget

Open Session (1:00 p.m.–6 p.m.)

—Open Session Minutes, February 2000
—Closed Session Items for May 2000
—Chair's Report
—Director's Report
—Graduate Student Survey: Dr. Geoff Davis
—Committee Reports
—Interim Report, Committee on Strategic S&E Policy
—Program Approvals, Directorate for Education & Human Resources
—Budget and Long Range Planning

Marta Cehelsky,

Executive Officer.

[FR Doc. 00–5672 Filed 3–3–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–2377

Finding of No Significant Impact Related to Approval of Adjacent Land Remediation Plan for Kaiser Aluminum & Chemical Corporation, Tulsa, Oklahoma, License No. STB–472 (Terminated)

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of the Adjacent Land Remediation Plan (ALRP) for Kaiser Aluminum & Chemical Corporation (Kaiser), Tulsa, Oklahoma (Kaiser, 1998), submitted to NRC on August 17, 1998. Kaiser is obligated to remediate the offsite property adjacent to their Tulsa, Oklahoma site to meet the release criteria established in the Action Plan to Ensure Timely Remediation of Sites Listed in the Site Decommissioning Management Plan (hereafter known as the SDMP Action Plan) NRC, 1992).

Environmental Assessment

Introduction

On March 7, 1958, NRC issued Source Material License No. C–4012 to Standard Magnesium Corporation (Standard Magnesium), for possession of magnesium-thorium alloy. Standard Magnesium purchased magnesium-thorium scrap metal for reclaiming purposes. The end product from Standard Magnesium's manufacturing process was magnesium anodes used for cathodic protection on items such as tanks and pipelines. NRC License No. STB–472 superceded License No. C–4012 on November 22, 1961. In 1964, Standard Magnesium became a wholly owned subsidiary of Kaiser within the Division of Kaiser Chemical Company. On June 5, 1968, License No. STB–472 was amended to include the possession of uranium, so that Standard Magnesium could process magnesium slag containing uranium. It does not appear that uranium was ever received or processed on site. On March 16, 1971, License No. STB–472 was terminated at the licensee's request.

In 1991, Oak Ridge National Laboratory (ORNL) was contracted, by NRC, to review and evaluate all nuclear material licenses terminated by NRC or its predecessor agencies since inception of material regulation in the late 1940s. One of the objectives of this review was to identify sites with a potential for meaningful residual contamination, based on information in the license documentation. ORNL identified the Kaiser site as having the potential for residual contamination. On November 17, 1993, an NRC inspector surveyed the Kaiser facility to assess the potential for residual contamination at the site. The inspector found contamination on the surface, indicating that waste magnesium-thorium slag was improperly disposed of in the past. Off-site residual thorium contamination was first identified during a subsequent NRC inspection conducted on June 29, 1994. The off-site thorium contamination is due to slag dumping in areas to the east and south of the current Kaiser property boundary, on property which belonged to Standard Magnesium/Kaiser during licensed operations. NRC notified Kaiser on August 19, 1994, that the site had been added to the Site Decommissioning Management Plan (SDMP). Kaiser has agreed to perform remediation activities in accordance with current regulations and release limits, even though it is not currently a licensee since its license was terminated in 1971.

Proposed Action

Kaiser is proposing to remediate the off-site areas to the east and south of Kaiser's property which contain residual thorium contamination above the unrestricted release limits specified in the SDMP Action Plan (370 Becquerel per kilogram (Bq/Kg) (10 picocurie per gram (pCi/g)) total thorium). Kaiser proposes to:

(1) Excavate soil with thorium levels above the maximum average concentration, and transport it directly to the Kaiser storage site, or load the contamination soil onto trucks for transport to the storage site.

(2) Control the excavation process to assure contamination is not spread during excavation or transport;

(3) Stockpile contaminated soil on Kaiser Property within a fenced location. It is estimated the 4673 cubic meters (m^3 (165,000 cubic feet (ft^3)) of contaminated soil will be transported and stored on Kaiser property pending final disposal

(4) Control stockpiled soil to minimize erosion, airborne dust, and precipitation runoff;

(5) Conduct a final survey of excavated areas and transport routes in accordance with NUREG/CR–5849, ''Manual for Conducting Radiological Surveys in Support of License Termination;'' and

(6) Backfill excavated areas with unaffected material after receiving NRM acceptance of the final survey report (Kaiser, 1998).

The Need for Proposed Action

The Kaiser property and adjacent land areas to the east and south contain thorium contaminated soil upon which magnesium was extracted from magnesium thorium alloys. The thorium-bearing slag was disposed of on-site. Some of the slag was dumped onto, what is now, land adjacent to the Kaiser property. Kaiser is proposing to remediate its property and the adjacent land areas as separate actions, with the adjacent land areas being remediated first.

Site characterization studies (Kaiser, 1999) indicate that thorium contamination in the adjacent land areas extends from the Kaiser fence up to 36.6 m (120 ft) from the fence. Observed thorium concentrations on the adjacent property range from background to 13,478 Bq/kg (363.9 pCi/g) of soil. Exposure rate measurements range from background 2.6 nanoCoulomb per kilogram per hour (nC/kg hr) (10 microRoentgen per hour (uR/hr)) (background) to 31 nC/kg hr (120 uR/hr). Calculations by Kaiser indicate that soil with thorium concentrations above 111.11 Bq/kg (3.0 pCi/g 232Th) of soil will require remediation to meet NRC's unrestricted release limits. Kaiser estimates the volume of contaminated soil in the adjacent land areas to be 4673 m^3 (165,000 ft^3). Kaiser proposes to excavate, transport, and store the contaminated soil on Kaiser property pending final disposition (Kaiser, 1998).

The proposed action is necessary for Kaiser to regain control of the off-site thorium contaminated soil and to minimize exposures to the public who may be inadvertently exposed to it.

Alternative to Proposed Action

The remediation approach proposed by Kaiser allows them to take control of all contaminated material created by Standard Magnesium/Kaiser and make adjacent land areas acceptable for unrestricted use. Further, the proposed approach allows Kaiser to dispose of all contaminated material at once. There are two alternatives to the proposed action of excavating and storing contaminated soil on Kaiser property: (1) No action; and (2) to excavate and transport the contaminated material directly to a licensed disposal facility. The no-action alternative is not acceptable because soil containing thorium at levels exceeding NRC's limit for unrestricted use is accessible to the public. The second alternative is not considered to be advantageous, because it does not give Kaiser the option of disposing of all material collectively. This alternative does not preclude Kaiser from sending contaminated soil from adjacent land areas to a low-level radioactive waste disposal facility in the future, if necessary.

Environmental Impacts of Proposed Action

Remediation of the adjacent land areas could result in both radiological and non-radiological environmental impacts. Radiological environmental impacts that could result from the remediation of the adjacent land areas include exposure, inhalation, and ingestion hazards to workers and the public. These hazards could occur during excavation, transport, or storage of the contaminated soil.

Potential radiological impacts during excavation include: (1) Exposure; (2) inhalation and ingestion to workers; and (3) inhalation and ingestion to the public. Kaiser has committed to perform work activities in accordance with the Radiation Control Plan (RCP) submitted to the NRC as Appendix C of the ALRP. Worker doses due to direct exposure to the contaminated soil are expected to be small. Site characterization revealed that 74 percent of the samples contained less than 370 Bq/kg (10 pCi/g), and 83 percent contained less than 740 Bq/kg (20 pCi/g) (Kaiser, 1999). Since worker exposure time will be short, and thorium concentrations are relatively low, Kaiser estimates that doses due to direct contact with soil will be less than 1 millisievert per year (mSv/yr) (100 millirem per year (mrem/yr)). Inhalation and ingestion impacts will be minimized to the workers and public by controlling airborne material levels. Air sampling will be conducted in work areas, and at work area boundaries to evaluate off-site releases. Action will be taken if radioactivity levels exceed 10 percent of the regulatory limit in work areas and 50 percent of the regulatory limit at the work area boundary. Kaiser's RCP (Kaiser, 1998) includes controls for keeping external and internal radiation exposures to workers, and the public, ''as low as reasonably achievable'' (ALARA). These controls include implementing: (1) The RCP; (2) radiation worker training; (3) a respiratory protection program; (4) safety work permit procedures; and (5) radioactive material storage and handling procedures.

The potential for radiological impacts during transportation is limited. Spillage during transportation is the only credible scenario for workers receiving a potential dose. Since any spills could be immediately recovered, doses due to direct exposure will be minimal. The potential exists for contaminated material to become airborne during transportation, unloading, or as a result of accidental spills. In the ALRP, Kaiser commits to using load covers, or other means, as necessary to prevent the spread of contamination during hauling. Potential radiological impacts to workers and the public due to airborne material will be controlled as described above.

Potential radiological impacts resulting from the storage of the contaminated soil on Kaiser property include doses to the public from airborne material and precipitation runoff. In the ALRP, Kaiser commits to minimize the spread of contamination by storing soil on land that is already contaminated. Erosion and dust will be controlled by planting vegetation, covering with sheeting, or covering with clean soil. Precipitation runoff will be controlled with engineering measures to ensure that drainage from the stockpile will be into the retention pond. The RCP also references a radioactive liquid handling procedure.

The potential for groundwater contamination at the site is minimal. Site characterization sampling at the site indicates that the vertical migration of the thorium is limited. Sampling revealed that thorium concentrations dropped quickly in undisturbed soil. Sampling also indicates that the freshwater pond, to the west of the site, controls the groundwater flow in the water table aquifer (Kaiser, 1995). Water samples taken from the freshwater pond that thorium concentrations consistent with background levels.

NRC staff conducted an environmental justice review for the Kaiser site. We have determined that there are no environmental justice issues with the Kaiser site because there are no disproportionately high minority or low-income populations near the site.

Agencies and Individuals Consulted

This Environmental Assessment (EA) was prepared entirely by NRC staff. No other sources were used beyond those referenced in this EA.

NRC staff provided a draft of the EA to Oklahoma Department of Environmental Quality (ODEQ) for review. By facsimile dated July 30, 1999, ODEQ agreed with NRC's conclusion that the proposed action will not have any significant affect on the quality of the human environment.

NRC contacted the Fish and Wildlife Service to ensure that the proposed action will not have an adverse impact on threatened and endangered species.

Mr. Ken Frazier informed the NRC by phone on August 2, 1999, that the proposed action will have no impact on threatened and endangered species.

NRC also contacted the Oklahoma Historical Society to determine if the proposed action would have any adverse impacts on sacred or historical properties near the Kaiser site. The Oklahoma Historical Society informed Kaiser, by letter dated August 31, 1999, that there are no historic properties affected by the project.

The Oklahoma Archeological Survey informed NRC, by letter dated August 6, 1999, that no archeological sites are listed as occurring within the project area and no archeological materials are likely to be encountered.

The Creek Nation of Oklahoma informed Kaiser, by letter dated August 5, 1999, that there are no religious or sacred sites within the project area that will be affected by the undertaking of this project.

Conclusions

Radiological exposures to workers and the public will be in accordance with 10 CFR Part 20 limits. Kaiser has committed to perform remediation activities in accordance with an acceptable RCP. NRC staff believes the RCP provides adequate controls to keep potential doses to workers and the public from direct exposure, airborne material, and released effluents, ALARA.

NRC staff also believes that the remediation alternative proposed by Kaiser minimizes the potential dose to members of the public, and other environmental impacts. Potential doses to members of the public will be minimized by removing contaminated soil from public areas and storing on property fenced and controlled by Kaiser. The proposed remediation alternative also minimizes the other potential environmental impacts. The volume of contaminated soil to be excavated and stored on Kaiser property is a small fraction of the total volume of contaminated soil present on Kaiser property requiring remediation. Therefore, the potential environmental impact from the proposed action is insignificant.

References

1. Kaiser Aluminum Specialty Products, ''Field Characterization Report,'' April 18, 1995.

2. Kaiser Aluminum & Chemical Corporation, ''Adjacent Land Remediation Plan for Kaiser Aluminum & Chemical Corporation, Tulsa, Oklahoma,'' Revision 0, August 1998.

3. Kaiser Aluminum and Chemical Corporation, ''Adjacent Land Characterization,'' March 1999.

4. NRC , ''Action Plan to Ensure Timely Remediation of Sites Listed in the Site Decommissioning Management Plan,'' 57 FR 13389, April 16, 1992.

Finding of No Significant Impact

NRC has prepared an EA related to the approval of Kaiser's ALRP, Terminated License No. STB–472. On the basis of this EA, NRC has concluded that the environmental impacts that would be created by the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that Finding of No Significant Impact is appropriate.

The EA and the documents related to this proposed action are available for public inspection and copying at the NRC's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: John T. Buckley, Project Manager, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards. Telephone: (301) 415–6607.

Dated at Rockville, Maryland, this 14th day of February 2000.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–5587 Filed 3–7–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Application for a License to Export Radioactive Waste

Pursuant to 10 CFR 110.70(b)(2) ''Public notice of receipt of an application'', please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <*http://www.nrc.gov/NRC/ADAMS/index.html*> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of the application for a license to export special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant/date of application/date received/application number	Description of material		End use	Country of destination
	Material type	Total qty		
Transnuclear, Inc. ..... February 11, 2000. February 14, 2000. XSNM2611—Revised	High-enriched Uranium (93.45%).	150.348 kg Uranium/140.500 kg U–235.	Fuel for HFR/Petten Reactor	Netherlands.

Dated this 1st day of March 2000 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Deputy Director, Office of International Programs.

[FR Doc. 00–5586 Filed 3–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 12, 2000, through February 25, 2000. The last biweekly notice was published on February 23, 2000 (65 FR 9000).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 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 April 7, 2000, 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 electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner

must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: November 30, 1999.

Description of amendment request: The proposed amendment revises the test standard for laboratory testing of activated charcoal to tests in accordance with the ASTM D3803–1989 standard in response to Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.''

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 represent a significant increase in the probability or consequences of an accident previously evaluated.

The changes included in this request do not affect any accident initiating events. No new accident initiators or new failure modes are created. These changes will not result in any change to the charcoal efficiency credited in the accident analyses for any of the air treatment systems. The ability of each of the accident mitigation air treatment systems to perform its function will not be affected. System design flow requirements and filter/adsorber bank bypass leakage requirements remain unchanged. Therefore, the proposed changes will not adversely impact the capability of the accident mitigation air treatment systems and could not represent a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This LCA [license change application] does not involve the addition of any new hardware. The requested changes only affect testing standards for the three air treatment systems used for accident mitigation. Change[s] of a test standard for the air treatment systems could not create a new accident scenario. Therefore, these changes do not create the potential for any accident different from those that have been evaluated.

C. These proposed changes do not involve a significant reduction in a margin of safety.

The proposed T.S. changes will have no adverse affect on the performance of the three accident mitigation Air Treatment Systems. System design flow requirements and filter/adsorber bank bypass leakage requirements remain unchanged. Use of the charcoal lab testing protocol suggested by Generic Letter 99–02 will ensure that the charcoal adsorber is better able to adsorb radioiodine generated during postulated accidents. These changes do not result in a degradation of safety related equipment, and therefore, do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23–1, Philadelphia, PA 19103.

NRC Section Chief: Marsha Gamberoni, Acting.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: November 19, 1999.

Description of amendments request: The proposed amendments would revise Technical Specification (TS) 5.5.11.c, ''Ventilation Filter Testing Program (VFTP),'' to change the testing requirements of the engineered safety systems charcoal adsorbers.

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:

Standard 1—Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS 5.5.11.c, initiates a laboratory performance test of adsorber carbon (charcoal) that yields more accurate results than what is currently required by TS. The proposed change also deletes the specific reference to the ANSI [American National Standards Institute] standard by which the adsorber carbon sample is obtained. The proposed changes to test adsorber carbon to a more current and improved ASTM [American Society for Testing and Materials] standard and delete the ANSI standard by which the adsorber carbon sample is obtained would not be plant accident initiators as described in Chapter 6 or Chapter 15 of the PVNGS [Palo Verde Nuclear Generating Station] UFSAR

[Updated Final Safety Analysis Report]. The changes would not involve a significant increase in the probability of an accident previously evaluated.

Carbon adsorption plays a direct role in mitigating the consequences of a radiological event. Safety-related air-cleaning units used in the ESF [engineering safety features] ventilation systems of nuclear power plants reduce the potential onsite and offsite consequences of a radiological accident by the adsorption of radioiodine. The proposed amendment to change the laboratory performance test for carbon will yield more conservative results than what is currently required by TS. Hence, it will better ensure that the adsorber carbon for TS systems used in the mitigation of an accident remains above the assumed carbon decontamination efficiency referenced in Chapter 6 and Chapter 15 of the UFSAR.

This proposed amendment does not alter, degrade, or prevent actions described or assumed in an accident. It will not alter any assumptions previously made in evaluating radiological consequences or, affect any fission product barriers. It does not increase any challenges to safety systems as well. Therefore, this proposed amendment would not significantly increase the consequences of an accident previously evaluated.

Standard 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to TS 5.5.11.c, initiates a laboratory performance test of adsorber carbon that yields more accurate results than what is currently required by TS. The proposed changes to test adsorber carbon to a more current and improved ASTM standard and delete the specific reference to the ANSI standard by which the adsorber carbon sample is obtained would not be plant accident initiators as described in Chapter 6 or Chapter 15 of the PVNGS UFSAR. The proposed amendment does not change the function of any SSC [structure, system, and component]. TS nuclear air treatment systems function to filter radiological releases during design basis accidents. This change will provide greater assurance that this function is provided. The revised TS required laboratory tests utilize practices now in place, changing only the testing parameters. The changes do not alter, degrade, or prevent actions described or assumed in an accident described in the PVNGS UFSAR from being performed. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety, as defined in the PVNGS Technical Specifications, is not reduced but is enhanced due to improved testing. This change initiates a laboratory performance test on adsorber carbon that yields more accurate results than what is currently required by TS and deletes the specific reference to the ANSI standard by which the adsorber carbon sample is obtained. The proposed change to test adsorber carbon to a more current and improved ASTM standard will ensure the carbon media's ability to adsorb radioactive gases will remain above that credited in the PVNGS' dose analysis for postulated accidents.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: December 1, 1999.

Description of amendments request: The proposed amendments to the operating licenses would delete or update outdated administrative information and delete license conditions that are no longer applicable or have been completed.

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:

Standard 1—Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No—The proposed administrative changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed administrative Operating License (OL) amendments would (1) delete or update operating license references to outdated administrative information, (2) delete license conditions that were complied with and are no longer applicable to the current operating environment, and (3) delete license conditions that were one-time requirements and have been completed. Since these proposed changes are administrative and have no [e]ffect on the current OL requirements, plant design, operation, or maintenance, the proposed administrative changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No—The proposed administrative changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes would have no [e]ffect on the physical plant. Consequently, plant configuration and the operational characteristics remain unchanged and the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Does the proposed change involve a significant reduction in a margin of safety?

No—The proposed administrative changes do not involve a significant reduction in a margin of safety. The proposed changes are administrative and have no [e]ffect on the current OL requirements, plant design, operation, or maintenance. No margin of safety would be affected by the proposed administrative changes to the PVNGS [Palo Verde Nuclear Generating Station] OLs since no current operating requirements would be changed.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: January 27, 2000.

Description of amendments request: The proposed amendment modifies the conditions of containment closure during core alterations/fuel handling and loss of shutdown cooling in Calvert Cliffs Units 1 and 2. The reason for this proposed amendment is to improve personnel safety and the progress of outages by allowing greater egress from and access to the Containment during refueling outages. A new containment outage door assembly will be installed on the outside of the equipment hatch opening to provide quicker closure, improve safety when the door is open, and allow more flexibility when staging material in the Containment during an outage. Changes to the way the personnel air lock and the containment

purge system are operated during maintenance activities on the Shutdown Cooling System are also part of the proposed amendment.

The proposed amendment changes Technical Specifications (TSs) 3.9.3 and 3.9.4 to allow the new containment outage door to remain open during core alterations and fuel handling, during maintenance and testing activities on the Shutdown Cooling system, and to be used as an alternate to the existing equipment hatch to close the equipment hatch opening when containment closure is required. The proposed changes will also allow the personnel air lock and the containment purge valves to remain open during maintenance activities on the Shutdown Cooling System. Baltimore Gas and Electric Company (BGE) also proposes to revise TS 3.9.3 to indicate that four bolts is the minimum number required to secure the equipment hatch for closure. In addition, BGE proposes deleting the words ''when there is 23 feet of water above the fuel'' from Limiting Condition for Operation 3.9.3.c.2 since this requirement is already part of the applicability statement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will modify the conditions of containment closure during core alterations/fuel handling and during maintenance/testing activities on the Shutdown Cooling (SDC) System. Specifically, the proposed changes will allow the new containment outage door, the personnel air lock door, and the containment purge valves to stay open during core alterations/fuel handling, and during maintenance and testing activities on the SDC System. The proposed change will also allow the new containment outage door to be used as an alternate to the existing equipment hatch to close the equipment hatch opening when closure is required. Additionally, the proposed changes will change the wording of the Technical Specifications to indicate that four bolts is the minimum number required to secure the equipment hatch when it is used for containment closure. The proposed changes also remove[ ] the water level requirement from Limiting Condition for Operation 3.9.3 since the water level requirement is part of the applicability statement for this Technical Specification.

Closing the containment penetrations is considered to be a mitigator of the radiological consequences of a fuel handling incident and a loss of SDC, not an initiator. Therefore, allowing the containment outage door, personnel air lock, and the containment purge valves to be open during these outage activities does not involve a significant increase in the probability of an accident previously evaluated.

The consequence of a fuel handling incident is the release of radioactivity from Containment. The potential offsite dose resulting from a fuel handling incident has been evaluated. Based on a minimum decay time of 100 hours prior to handling fuel (Technical Reference Manual Section 15.9.1), the calculated offsite doses resulting from a fuel handling incident are 14.06 rem to the thyroid, and 0.457 rem to the whole body, with the personnel air lock door open. All activity released from Containment over the length of the incident is assumed to be unfiltered. The calculated doses resulting from a fuel handling incident are less than 25% of the limits of 10 CFR Part 100 (75 rem thyroid and 6 rem whole body). This analysis will apply to the equipment hatch opening because the analysis assumes no containment closure. The amount of radioactivity released is bounded by the current analysis of record. Although natural air circulation will cause some containment air to go out through any opening in a fuel handling accident, there is no pressure produced to push the radioactivity out of Containment. Therefore, having the containment outage door open during core alterations and fuel handling does not involve an increase in the consequences of an accident previously evaluated. Additionally, if the equipment hatch is to be used, specifying a minimum number of four bolts will allow the optional use of more bolts, if desired.

The consequence of a loss of SDC is the potential for release of radioactivity to the atmosphere outside Containment. Closing containment penetrations is a mitigator of that consequence. Administrative controls will be put in place to ensure that in an emergency containment closure can be quickly achieved. The emergency air lock will have at least one door closed when containment closure is required by a SDC condition. The containment purge system isolation valves are closed automatically on a containment high radiation signal and can be shut by remote manual operation. The maximum calculated pressure that can develop in the Containment for the limiting loss of SDC case is 12 psig. All required penetration closure devices can withstand that pressure. Therefore, allowing the personnel air lock doors, the containment outage door, and the purge isolation valves to remain open does not involve a significant increase in the consequences of a loss of SDC.

Therefore, the proposed Technical Specificaton changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

This requirement change does not involve a significant change in the operation of the plant and no new accident initiation mechanism is created by the modification. Closing containment penetrations is considered to be a mitigator of the radiological consequences of any accident in the Containment, not an initiator. The equipment hatch opening, the personnel air lock, and the purge supply and exhaust are currently opened and closed during the course of an outage. The proposed changes allows them to remain open during a period when they are currently required to be closed. The closure function of the equipment hatch opening in Modes 5 and 6 will be performed by a hinged containment outage door; thus, closing the equipment hatch opening will be easier and will require fewer people and less time. The operation of the containment outage door is not a significantly different method of operation from that of other dogged doors at Calvert Cliffs. Using the containment outage door to close the equipment hatch opening instead of the equipment hatch also mitigates the consequences of the incident and does not initiate an accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

The margin of safety for containment closure during core alternation/fuel handling is based on the amount of offsite dose resulting from a fuel handling incident and the safety of personnel in the Containment at the time of the incident. An offsite dose calculation previously approved by the NRC for a fuel handling incident is 14.06 rem to the thyroid, and 0.457 rem to the whole body, with no containment closure established, and any activity released from the Containment assumed to be unfiltered. These calculated doses are less than 25% of the limits of 10 CFR Part 100. The analysis will apply to the containment outage door because the analysis assumes no containment closure. Emergency personnel egress from Containment will be through the open door, which is an improvement in personnel safety because this exit is not currently available. Additionally, trained personnel will be available to close the door and contain any radiation released inside Containment as a result of a fuel handling incident. Leaving the containment outage door open during core alterations and fuel handling will not allow more than the calcutated amount of radionuclides to escape from Containment; shutting the door following a fuel handling incident will increase the margin of safety by keeping the actual offsite dose lower than the calculated dose.

Therefore, allowing the containment outage door to be open during fuel handling would not involve a significant reduction in the margin of safety.

The margin of safety for containment closure in the case of loss of SDC is twofold: (1) the time required to close the Containment to prevent a radioactive release to the atmosphere outside Containment if SDC should be lost; and (2) the ability to retain the pressure generated by boiling of reactor coolant as a result of a loss of SDC.

Currently, all containment penetrations are required to be closed prior to taking the SDC

System out-of-service for maintenance, or within four hours if SDC is lost. The radiological consequences of a loss of SDC incident do not occur immediately on loss of SDC. The containment purge isolation valves close rapidly on a high radiation signal or are closed by remote manual operation. The containment outage door and the personnel air lock doors are designed to be closed rapidly by site personnel. Other containment penetrations that could release radiation to the environment outside the Containment will be required to be closed. The maximum calculated pressure that can develop in the containment as a result of a loss of SDC is 12 psig. The purge isolation valves, the personnel air lock doors, and the containment outage door are all designed to meet this pressure retaining requirement. The proposed changes do not increase the possibility of a release of radiation following a loss of SDC incident.

Therefore, the ability to provide containment closure is maintained and the margin of safety is not significantly reduced by this proposed activity.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Marsha Gamberoni, Acting.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: January 11, 2000.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to increase allowable out-of-service times (AOTs) and surveillance test intervals (STIs) for selected actuation instrumentation. The proposed amendments implement AOT/STI changes based on Topical Reports by General Electric Company and the Boiling Water Reactor Owners' Group that have previously been reviewed and approved by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed TS changes increase the Allowable Outage Times and Surveillance Test Intervals (AOT/STI) for actuation instrumentation based on analyses developed and approved by the Nuclear Regulatory Commission (NRC). TS requirements that govern operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Therefore, these changes will not involve an increase in the probability of occurrence of an accident previously evaluated. Additionally, these changes will not increase the consequences of an accident previously evaluated because the proposed changes do not involve any physical changes to plant systems, structures or components (SSCs), or the manner in which these SSCs are operated. These changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients by the plant safety analysis or licensing basis. As justified and approved in the AOT/STI licensing topical reports, the proposed changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analyses. The proposed changes establish or modify time limits allowable for operation with inoperable instrument channels based on analyses which have been approved by the NRC. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite. For these reasons, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical changes to SSCs, or the manner in which these SSCs function. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed changes increase the AOTs and STIs for actuation instrumentation based on generic analyses completed by the Boiling Water Reactors Owners' Group (BWROG). The NRC has reviewed and approved the generic studies and has concurred with the BWROG that the proposed changes do not significantly affect the probability of failure or availability of the affected instrumentation systems. The analysis determined that there is no significant change in the availability and/or reliability of instrumentation as a result of the proposed changes in AOTs and STIs.

Furthermore, the change to increase the frequency of the reactor protection system scram contactor testing has been shown to improve plant safety. ComEd has determined these studies are applicable to Dresden Nuclear Power Station, Units 2 and 3. The proposed changes to AOTs provide realistic times to complete required testing and maintenance 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. Therefore, it is concluded that the proposed changes will 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 requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767

NRC Section Chief: Anthony J. Mendiola.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: November 22, 1999.

Description of amendment request: The proposed amendment would approve the use of new values for post-accident containment pressure in Pilgrim's net positive suction head (NPSH) analyses performed for the emergency core cooling system (ECCS) pumps.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will crediting the proposed post-LOCA [loss of coolant accident] containment pressure in ECCS analysis involve a significant increase in the probability or consequences of an accident previously evaluated?

Chapter 14 of the FSAR [final safety analysis report] contains evaluations of the worst postulated accidents that the Pilgrim plant was evaluated for, which include the refueling accident, the main steam line break outside primary containment, the recirculation line break inside primary containment, and the control rod drop accident. No increase in the probability of the evaluated accidents will result from crediting the proposed containment pressure because post-LOCA containment pressure does not represent an accident initiator but, rather, is an expected condition that will inherently exist in the containment after the pipe break inside containment.

The worst radiological consequences for the Pilgrim plant are associated with the design basis LOCA which is the double guillotine failure of the recirculation system piping. The radiological analysis of this event contained in FSAR Chapter 14 uses a TID–14844 source term and assumes a 1.5% per day leakage from the containment, which is greater than the maximum leakage allowed by the Technical Specifications. The results of this analysis are presented in Table 14.5–2 of the FSAR and indicate substantial margin when compared to 10 CFR Part 100 limits.

The radiological consequences of the design basis accident are not increased by taking credit for the post-LOCA suppression pool overpressure. Assuming containment integrity exists, the mechanism for increasing the consequences of the accident would be an increased leakage rate caused by an increase of the average differential pressure between primary and secondary containment during the accident response. However, the NPSH analysis performed for Pilgrim that includes post-LOCA containment pressure does not assume or require that the differential pressure between primary and secondary containment be maintained above the lower bounding minimum that exists due to thermal equilibrium conditions between the containment atmosphere and the suppression pool. Specifically, the containment pressure included in the ECCS pump NPSH analysis is inherently provided by the increase in wetwell vapor pressure and air/nitrogen partial pressure that exists due to equilibrium with increasing pool temperature with an accounting for containment initial conditions and leakage.

Inclusion of the post-LOCA containment pressure in the calculation of NPSH does not require that a higher containment pressure than would otherwise occur be purposely maintained, no requirement is incurred to delay operating containment heat removal equipment at the highest rate possible, no requirement is incurred to deliberately continue any condition of high containment pressure to maintain adequate NPSH, and no requirement is incurred for the purposeful addition of air/nitrogen into the containment to increase the available pressure.

The higher debris head losses that required the new NPSH evaluation are based on an updated analysis of LOCA-generated debris. The new debris analysis was performed in response to NRC Bulletin 96–03 using the guidance given in Regulatory Guide 1.82, Revision 2. The NRC guidance is used to ensure sufficient NPSH margin exists to accommodate the debris resulting from a LOCA. Using the proposed containment pressure limits included in this submittal, it is shown there is sufficient NPSH margin at all times following the bounding design basis accident.

Based on these reasons, the probability of accidents previously evaluated is not increased and the consequences of the design basis accident are not increased.

(2) Will crediting the proposed post-LOCA containment pressure create the possibility for new or different kinds of accidents?

As stated above, Chapter 14 of the FSAR contains the worst postulated accidents that the Pilgrim plant was evaluated for, which include the refueling accident, the main steam line break outside primary containment, the recirculation line break inside primary containment, and the control rod drop accident. New or different types of accidents are not created by including the containment pressure in NPSH analyses because post-LOCA containment pressure is an expected condition that will exist in the containment after the pipe break inside containment. The pressure included in the NPSH analysis is the minimum pressure that will exist due to thermal equilibrium conditions and must be considered as part of any accident analysis regardless of whether it is used in the evaluation of NPSH.

(3) Will crediting the proposed new limits for post-LOCA containment pressure in ECCS NPSH analyses involve a significant reduction in a margin of safety?

The integrity of the primary containment and the operation of the ECCS systems in combination limit the off-site doses to values less than those suggested in 10 CFR 100 in the event of a break in the primary system piping. In order for the ECCS pumps to meet their performance requirements, the NPSH available to the pumps throughout the accident response must meet their specific NPSH requirements. Excess NPSH margin will not improve the performance of the ECCS pumps because NPSH available must only meet NPSH requirements for the pump to operate on its pump curve and meet design expectations.

Including the proposed post-LOCA containment pressure in NPSH analyses increases the NPSH available to the ECCS pumps, but the methodology used includes only that pressure that will inherently exist due to thermal equilibrium between the containment atmosphere and the suppression pool because of the primary containment enclosure with an accounting for leakage. Post-accident containment pressure calculated in such a manner represents a conservative lower bound for the pressure that will be available. Therefore, it is expected the actual NPSH margin will exceed that calculated by these methods. The proposed pressure limits are enveloped at all times by the containment pressure calculated using the thermal equilibrium methodology. These methods for calculating NPSH available and NPSH margin were previously reviewed by the NRC for License Amendment 173.

The new debris analysis referenced in this submittal was done in accordance with Regulatory Guide 1.82, Revision 2. The LOCA debris analysis is considered conservative and bounding for all postulated accidents and transients. It is shown that, within the proposed containment pressure limits, there is sufficient NPSH margin at all times following the design basis accident to accommodate the debris head loss without affecting RHR [residual heat removal] or core spray pump performance.

Based on the above discussion, credit for the updated values of containment pressure in ECCS NPSH analyses does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: W. S. Stowe, Esquire, Entergy Nuclear Generation Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Section Chief: James W. Clifford.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2 (ANO–1&2), Pope County, Arkansas; Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi; Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana; and Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 23, 1999.

Description of amendment request: The proposed amendments would incorporate the use of American Society for Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' into each facility's Technical Specifications (TS). Entergy Operations, Inc. (the licensee) is submitting these proposed amendments as a complete response to NRC Generic Letter (GL) 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.''

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:

I. The proposed change does not signficantly increase the probability or consequences of an accident previously evaluated.

The proposed changes do not result from a physical change to the facilities or impact plant operations. Neither do they impact the response of the facilities to an accident.

American Society of Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' reflects the most up-to-date method for accurately testing the efficiency of activated charcoal contained in engineered safety features (ESF) system adsorbers. Establishing ASTM D3803–1989 as the required method for laboratory testing of activated charcoal represents an upgrade from the current TS requirements. Using ASTM D3803–1989 methodology ensures the tested charcoal will perform in a manner consistent with the facility's licensing basis.

The proposed acceptance criterion values for charcoal efficiency were calculated using the equation specified in GL 99–02. As documented in GL 99–02, the NRC [Nuclear Regulatory Commission] found this equation acceptable for determining charcoal efficiency when using ASTM D3803–1989 as the test method.

Based on the above discussion, the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

II. The proposed change does not create the possiblity of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result from a physical change to the facilities or impact plant operations.

Establishing ASTM D3803–1989 as the method for performing laboratory testing of nuclear-grade activated charcoal does not involve a physical alteration to the facility or impact plant operations. Using ASTM D3803–1989 methodology ensures the tested charcoal will perform in a manner consistent with the facility's licensing basis.

The proposed acceptance criterion values for charcoal efficiency were calculated using the equation specified in GL 99–02. As documented in GL 99–02, the NRC found this equation acceptable for determining charcoal efficiency when using ASTM D3803–1989 as the test method.

Based on the above discussion, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not result from a physical change to the facilities or impact plant operations. Neither do they impact the response of the facilities to an accident.

Safety-related air-cleaning units used in the ESF ventilation systems of nuclear power plants reduce the potential onsite and offsite consequences of a radiological accident by adsorbing radioiodine. To ensure the charcoal adsorbers used in these systems perform in a manner that is consistent with the facility's licensing basis, facility TS contain requirements to periodically test (in a laboratory) samples of charcoal taken from the air-cleaning units.

ASTM D3803–1989 reflects the most up-to-date method for accurately testing the efficiency of activated charcoal contained in ESF system adsorbers. Establishing ASTM D3803–1989 as the required method for laboratory testing of activated charcoal represents an upgrade from the current TS requirements and maintains the margin of safety by ensuring the tested charcoal performs in a manner consistent with the facility's licensing basis.

The proposed acceptance criterion values for charcoal efficiency were calculated using the equation specified in GL 99–02. As documented in GL 99–02, the NRC found this equation acceptable for determining charcoal efficiency when using ASTM D3803–1989 as the test method.

Based on the above discussion, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502; and Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: November 23, 1999.

Description of amendment request: The proposed amendments would make the following changes to the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2) Technical Specifications (TSs): (1) For BVPS–1, surveillance requirement (SR) 4.8.1.1.2.b.3.b would be revised to reflect a narrower required diesel generator (DG) frequency band; an associated footnote would be deleted; associated Bases would be revised to reflect these TS changes. (2) For BVPS–2, SR 4.8.1.1.2.f would be revised to clarify that the DGs are only required to achieve a minimum frequency and voltage within the first 10 seconds of the related test, and that the stated voltage and frequency bands are requirements for steady state operation of the DGs; a footnote is also added to this SR. (3) Page formats are revised as needed to permit the addition or deletion of text.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

For the Beaver Valley Power Station (BVPS) Unit No. 1 only, the proposed amendment will revise surveillance requirement (SR) 4.8.1.1.2.b.3.b.

Specifically, the required diesel generator (DG) frequency band specified in SR 4.8.1.1.2.b.3.b will be reduced. In addition, Footnote (6) pertaining to the DG frequency limits and associated Bases wording will be deleted.

For BVPS Unit No. 2 only, SR 4.8.1.1.2.f will be revised to clarify that the diesel generators are only required to achieve a minimum voltage and frequency in ≥ 10 seconds. The DGs are then required to obtain voltages and frequencies within the required bands during steady state operation. A new Footnote (8) will be added which modifies the stated voltage and frequency values in the proposed SR 4.8.1.1.2.f.1. This footnote will require the voltage and frequency values be appropriately increased to account for measurement uncertainties.

Page format will be revised as necessary to permit incorporation and deletion of text. These format changes include the addition or deletion of Technical Specification pages as required.

The DGs are used to support mitigation of the consequences of a design basis accident (DBA); however, they are not considered the initiator of any previously analyzed DBA described in the Updated Final Safety Analysis Report (UFSAR). The proposed amendment does not impact any of the offsite AC distribution system; therefore, the probability of a loss of offsite power event is not increased.

Therefore, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

The proposed reduction in the DG output frequency limits (for BVPS Unit No. 1 only) will continue to protect engineered safety feature (ESF) pumps from runout conditions and ESF pump motors from operating in an unanalyzed condition. The revised frequency limits have no adverse effect on the diesel generator operability. The revised DG output frequency limits do not increase the consequences of a design basis accident; this proposed change ensures that equipment will perform its intended function. This change is intended to prevent the DG from being loaded beyond analyzed loading limits and protect ESF equipment. The revised surveillance requirements being applied to operating limits will provide greater

assurance that increased performance requirements are not imposed on ESF equipment.

The proposed deletion of Footnote (6) (for BVPS Unit No. 1 only) removes the ability to evaluate the DG frequency response. The proposed wording is more restrictive in that the DG frequency response will be required to be demonstrated regardless of the amount of DG loading. The ability of the DGs to maintain the required output frequency as required to meet accident analysis assumptions will continue to be demonstrated on a periodic basis. The proposed deletion of the Bases wording pertaining to Footnote (6) is administrative in nature and does not affect plant safety. This change removes guidance information on how to conduct the engineering evaluation that will no longer be applicable following DG governor modifications.

The proposed revision to SR 4.8.1.1.2.f (for BVPS Unit No. 2 only) will continue to require that both DGs start simultaneously to confirm that there is not a cross-tie that could render both DGs incapable of performing their required functions. The proposed revision to SR 4.8.1.1.2.f will continue to require that each DG obtain the minimum conditions to accept load in the time frame assumed in the accident analysis. In addition, the proposed wording of SR 4.8.1.1.2.f will continue to require that each DG obtain the required steady state voltage and frequency values.

The proposed addition of Footnote (8) (for BVPS Unit No. 2 only) is administrative in nature and does not affect plant safety. The proposed footnote provides information that the values for voltage and frequency need to be increased to account for measurement uncertainties.

The revision to page format as necessary to permit incorporation and deletion of text is editorial in nature and does not affect plant safety.

Therefore, the proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed revisions have no adverse impact on the DBAs previously evaluated in the UFSAR. The proposed revisions will continue to assure that the DGs are available and fully operable to perform their intended safety function of providing sufficient electrical power to ESF equipment following a DBA and a loss of offsite power. New failure modes are not introduced as a result of the proposed revisions to the DG surveillance requirements. The proposed revision to the required DG frequency range will continue to prevent ESF motors and pumps from being subjected to overfrequency conditions which could reduce the life of the equipment. The proposed changes do not affect the probability of malfunction of a DG or its connected emergency AC power system.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety is not significantly reduced as a result of the proposed revisions. The margin of safety depends on the maintenance of specific operating parameters within design limits.

The BVPS Unit No. 1 DG reliability and performance during a loss of offsite power and a DBA are enhanced by the proposed revision to SR 4.8.1.1.2.b.3.b. This proposed revision (for BVPS Unit No. 1 only) will ensure that the maximum calculated DG loading does not exceed the UFSAR limit of 2745 kW. The proposed revision to SR 4.8.1.1.2.b.3.b for DG operating frequency limits continues to protect ESF equipment from overfrequency conditions. ESF equipment will continue to function, as assumed in the safety analysis, to ensure that fuel, reactor coolant system and containment design limits are not exceeded.

The proposed revision to SR 4.8.1.1.2.f (for BVPS Unit No. 2 only) will continue to require that both DGs start simultaneously to confirm that there is not a cross-tie that could render both DGs incapable of performing their required functions. The proposed revision to SR 4.8.1.1.2.f will continue to require that each DG obtain the minimum conditions to accept load in the time frame assumed in the accident analysis. In addition, the proposed wording of SR 4.8.1.1.2.f will continue to require that each DG obtain the required steady state voltage and frequency values.

The remaining changes are either administrative or editorial in nature and do not affect plant safety.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Marsha Gamberoni.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: April 15, 1999, as supplemented on December 22, 1999.

Description of amendment request: The proposed amendment would change the Technical Specification as described below:

Page 1.0–3 Clarification would be added to the definition of Secondary Containment Integrity.

Page 1.0–4 The definition of facility description and safety analysis report (FDSAR) would be expanded.

Page 2.3–3 The Bases section would be separated from this page which is the last page of the specification.

Page 2.3–4 Two paragraphs, which should have been deleted in an earlier revision, would be deleted and subsequent pagination would be affected. Two paragraphs would be moved from the end of the bases to that location. An unrelated wording change would also be made.

Page 2.3–7 In addition to pagination, a sentence would be added about the relays involved in undervoltage situations.

Page 3.4–1 The phrase ''(see Note below)'' would be deleted as unnecessary and two lines from the top of page 3.4–2 would be included as ''c.''

Page 3.4–2 Two lines would be moved to the prior page and designated ''c.''

Page 3.5–7 LCO statement of 36 hours would be deleted from Specification 3.5.B.6.a.3 because it is inconsistent with Specification 3.5.B.7.

Page 3.5–9 A bases statement would be added about administrative control over non-automatic primary containment isolation valves.

Page 3.5–11 A bases statement would be added about the use of the trunion room door.

Page 3.7–1 The phrase ''shutdown position'' would be corrected to ''shutdown condition.''

Page 3.17–1 The phrase ''the control room HVAC system'' would be corrected to ''one control room HVAC system.''

Page 4.5–13 The word ''off'' would be changed to ''on.''

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:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change are relatively minor in nature and are proposed to enhance clarity and understanding. None of the changes have any impact on safety and there is no change to an operating parameter of any system, component or structure. Accordingly, the proposed changes do not affect any accident precursors. Therefore, the probability of an accident previously evaluated is not increased. The proposed TS change will assure the ability of systems to perform their intended function. Therefore, the proposed changes will not involve a significant increase in the consequences of an accident previously evaluated. Therefore, the probability of occurrence

or the consequences of an accident previously evaluated in the Safety Analysis Report (SAR) will not increase as a result of these changes.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are relatively minor in nature and are proposed to enhance clarity and understanding. None of the changes have any impact on safety and there is no change to an operating parameter of any system, component or structure. The proposed changes do not involve placing systems in new configurations or operating systems in a different manner that could result in a new or different kind of accident. Therefore, the proposed activity does not create the possibility for a new or different kind of accident from any previously identified in the SAR.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety. The changes are primarily administrative and are proposed to enhance clarity and understanding. They do not modify an operating parameter of any system, component or structure. They do not adversely affect the performance characteristics of systems nor do they affect the ability of systems to perform their intended function. Therefore, the proposed changes do not involve a significant reduction in the 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.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: M. Gamberoni, Acting.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: December 15, 1999.

Description of amendment request: The proposed changes will revise the LGS Technical Specifications (TSs) to remove TS Table 3.6.3–1, ''Primary Containment Isolation Valves,'' and references to the table, from the TSs and relocate the information from the TS table to the Technical Requirements Manual, a licensee-controlled document.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of a previously evaluated accident is not increased because containment isolation is not an accident initiator and the proposed changes do not impact any accident initiating conditions. The consequences of an accident previously evaluated are not increased because the proposed changes do not impact the ability of containment to restrict the release of any fission product radioactivity to the environment. The proposed change to remove the primary containment isolation valve table from TS and relocate the information to an administratively controlled document, and to revise the wording in TS to reflect this change, will have no impact on any safety related structures, systems or components. The Technical Specification requirements for the primary containment isolation valves will not be changed. In addition, the details of the table are not being changed, only relocated to a different controlling document. The proposed changes simplify the Technical Specifications, meet the regulatory requirements for control of containment isolation, and are consistent with the guidance provided in Generic Letter 91–08. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature and do not result in physical alterations or changes in the method by which any safety related system performs its intended function(s). The proposed changes do not impact any safety analysis assumptions. The proposed changes do not create any new accident initiators or involve an activity that could be an initiator of an accident of a different type. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed change to remove the primary containment isolation valve table from TS and relocate the information to an administratively controlled document, and to revise the wording in TS to reflect this change, do not alter the Technical Specifications requirements for containment integrity and containment isolation and will not adversely affect the containment isolation capability. The licensee controlled document will be maintained under the requirements of TS Administrative Controls Section 6.0 and the provisions of 10CFR50.59. In addition, the proposed changes do not impact any safety analysis assumptions. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC. Section Chief: James W. Clifford.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 9, 2000.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Limiting Condition for Operation (LCO) 3.8.2.1. The proposed change would add two new Action Statements for operating conditions where a Class-1E battery's electrolyte temperature is below the minimum limit specified in TS Surveillance Requirement 4.8.2.1.b.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC). The Class-1E batteries will continue to function as designed. The Class-1E battery system is designed to mitigate the consequences of an accident, and therefore, can not contribute to the initiation of any accident. The proposed TS LCO Action Statements will continue to ensure that the Class-1E batteries are capable of performing their required safety functions while providing a sufficiently conservative period of continued plant operation. In addition, this proposed TS change will not increase the probability of occurrence of a malfunction of any plant equipment important to safety, since the manner in which the Class-1E battery system is operated is not affected by these proposed changes. The operating limits specified in the proposed TS LCO ensure that the battery's safety functions will be accomplished. Therefore, the proposed TS changes would not result in the increase of the consequences

of an accident previously evaluated, nor do they involve an increase in the probability of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to the design of any plant SSC. The design and operation of the Class-1E battery system is not changed from that currently described in the UFSAR [Updated Final Safety Analysis Report], only the allocation of battery design margin would be temporarily affected by the proposed TS LCO. The Class-1E battery system will continue to function as designed to mitigate the consequences of an accident. Establishing a 31 day period where a Class-1E battery would be considered operable, with electrolyte temperature at or above 65°F and Category A and Category B limits met as appropriate, does not permit plant operation in a configuration that would create a different type of malfunction to the Class-1E batteries than any previously evaluated. In addition, the proposed TS changes do not alter the conclusions described in the UFSAR regarding the safety related functions of the Class-1E batteries or their support systems.

Therefore, the proposed TS 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 changes contained in this submittal would implement TS requirements that either: (1) Permit continued plant operation when the safety function of the Class-1E batteries can be performed; or (2) conservatively require placing the plant in a safe shutdown condition. A Class-1E battery operating within Category A and Category B limits as appropriate and a 65°F battery electrolyte temperature (for a limited 31 day period) will still perform its safety-related functions. Temporary allocation of battery capacity margins in compensation of degraded operating conditions (low specific gravity) is already permitted by the Hope Creek TS (for a 31 day period). The ability of the Class-1E batteries to independently supply their required loads for four hours without support from battery chargers is not adversely affected by these proposed changes. Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant (PBNP), Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: January 19, 2000 (TSCR 217).

Description of amendment request: The proposed amendments would revise Technical Specification 15.4.4 to clarify that a different containment tendon may be designated as a control tendon providing that the new control tendon had not previously been physically changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change does not involve a change to structures, systems, or components which would affect the probability or consequences of an accident previously evaluated in the PBNP Final Safety Analyses Report (FSAR). The containment tendons are components integral to maintaining the containment pressure boundary under post accident conditions. Neither the tendons nor the containment tendon testing process are accident initiators. The proposed change simply clarifies the Technical Specifications regarding the selection of control tendons used to develop a tendon relaxation history and correlate observed test data. The proposed change does not affect reactor operations or accident analysis and has no significant radiological consequences. Therefore, this change will not create a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents. This change clarifies the Technical Specifications regarding the selection of control tendons used to develop a history and correlate observed test data. Except for the method of selecting the control tendon, the methods for performing the actual tendon surveillances are not changed. No new accident modes are created by selecting the control tendons. No safety-related equipment or safety functions are altered as a result of this change. Selecting a control tendon has no influence on, nor does it contribute to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. Therefore, the proposed change will not create the possibility of a new or different kind of accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The proposed change affects only the selection of control tendons used to develop a history and correlate observed test data. Except for the method of selecting the control tendons, the methods for performing the actual tests are not changed. The proposed change is based on NRC accepted provisions contained in Regulatory Guide 1.35, Revision 3. Furthermore, the proposed change will not reduce the availability of systems associated with containment integrity when they are required to mitigate accident conditions. Therefore, the proposed change will not create a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

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 electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina.

Date of application for amendment: July 9, 1999, as supplemented on January 19, 2000.

Brief description of amendment: This amendment revises Technical Specification (TS) ¾.2.2, ''Heat Flux Hot Channel Factor—$F_Q(Z)$,'' TS ¾.2.3, ''RCS Flow Rate And Nuclear Enthalpy Rise Hot Channel Factor,'' TS ¾.2.5, ''DNB Parameters,'' an associated note in TS Table 2.2–1, and associated Bases. Specifically, the proposed amendment would: (1) Remove the allowance for reduced power operation for reduced Reactor Coolant System (RCS) flow rate conditions; (2) separate the requirements for F delta H and RCS flow rate in the format prescribed by NUREG–1431, Revision 1, ''Standard Technical Specifications, Westinghouse Plants,'' dated April 1995; and (3) implement the guidance of NUREG–1431, Revision 1, and NRC Generic Letter 88–16, dated October 4, 1988, for TS ¾.2.2 and TS ¾.2.3 and associated Bases by removing cycle-specific parameters and placing that information into the Core Operating Limits Report.

Date of issuance: February 24, 2000.

Effective date: February 24, 2000.

Amendment No. 95.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 11, 1999 (64 FR 43765).

The January 19, 2000, submittal contained clarifying information only, and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2000.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: July 9, 1999.

Brief description of amendment: This amendment revises the Technical Specifications (TS) by relocating several instrumentation TS to plant procedures.

Date of issuance: February 24, 2000.

Effective date: February 24, 2000.

Amendment No. 96.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 11, 1999 (64 FR 43766).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2000.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 30, 1999, as supplemented by letter dated December 2, 1999.

Brief description of amendment: By application dated July 30, 1999, as supplemented by letter dated December 2, 1999, Entergy Operations, Inc. (the licensee) requested changes to the Technical Specifications (TSs) (Appendix A to Facility Operating License No. NPF–47) for the River Bend Station, Unit 1. The proposed change, more commonly referred to as ''power uprate,'' would revise the TSs and the operating license to increase the current licensed power of 2894 megawatts thermal (MW_{th}) to the uprated power level of 3039 MW_{th}, an increase of 5 percent. Included in the power uprate license amendment application was a request to increase the main steam safety and relief valves (S/RV) safety mode/function setpoint tolerance defined in Surveillance Requirement (SR) 3.4.4.1 from +0/−2 percent to ±3 percent.

This amendment approves, prior-to the issuance of the power uprate license amendment, a portion of the S/RV setpoint tolerance change requested. The change increases the safety function lift setpoint tolerances for the S/RVs listed in SR 3.4.4.1 from the current +0/−2 percent of the safety function lift setpoint to +0/−3 percent (*i.e.,* a partial 3 percent tolerance). The remaining (''+3 percent'') portion of the proposed setpoint tolerance change will be reviewed in conjunction with approval for the power uprate.

Date of issuance: February 9, 2000.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 109.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 17, 1999.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 23, 1998.

Brief description of amendment: Modification of Limiting Condition for Operation for the chlorine detection system and correction of typographical error in Table 3.3–4.

Date of issuance: February 11, 2000.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 156.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1999 (64 FR 9190).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 3, 1999.

Brief description of amendment: The amendment revises Final Safety Analysis Report, Section 9.5.4.1. The revision changes this section to explicitly list the Waterford Steam Electric Station, Unit 3 (Waterford 3) deviations from American National Standards Institute (ANSI) Standard N195–1976.

Date of issuance: February 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 157.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 17, 1999 (64 FR 62713).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: December 24, 1998, as supplemented January 6, 1999.

Brief description of amendments: These amendments change the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2) Technical Specifications (TSs) to ensure that Emergency Diesel Generator (EDG) requirements contained in Technical Specification 3/4.8.1 for both units are consistent with assumptions contained in design analyses and requirements of plant procedures. Revisions to TS 3/4.8.1, ''A.C. Sources,'' contained in these amendments provide more conservative limiting conditions for operation and surveillance requirements that affect EDG fuel oil storage volume, EDG load rejection and overspeed testing, and EDG operating frequency requirements. The applicable bases for each unit are also refined, as necessary, to strengthen the explanations regarding EDG fuel oil storage systems and provide the EDG overspeed in terms of frequency (Hertz) and speed (Revolutions Per Minute).

Date of issuance: February 11, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 227 and 105.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1999, (64 FR 4154). The January 6, 1999, letter requested a 60-day implementation period. This letter did not change the initial proposed no significant hazards consideration determination or expand the amendments beyond the scope of the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: July 27, 1999.

Brief description of amendment: This amendment eliminates TS 6.4, ''Training,'' and relocates TS 6.5.2.8, ''Audits,'' and TS 6.10, ''Record Retention,'' to the USAR Chapter 17 Quality Assurance Program. Additionally, the record keeping requirements of TS 6.14, ''Process Control Program,'' and TS 6.15, ''Offsite Dose Calculation Manual,'' are also being relocated to the USAR Chapter 17 Quality Assurance Program. Finally, an editorial change has been made to TS 6.8, ''Procedures and Programs.''

Date of issuance: February 14, 2000.

Effective date: Immediately, to be implemented within 120 days.

Amendment No.: 235.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 8, 1999 (64 FR 48863).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: November 8, 1999

Brief description of amendment: This amendment relocates Technical Specification (TS) 6.5.1, Station Review Board, and TS 6.5.2, Company Nuclear Review Board, to the Davis-Besse Nuclear Power Station Updated Safety Analysis Report Chapter 17.2, Quality Assurance During the Operations Phase. These changes are consistent with the recommendations in NRC Administrative Letter 95–06, ''Relocation of Technical Specification Administrative Controls Related to Quality Assurance,'' dated December 12, 1995.

Date of issuance: February 14, 2000.

Effective date: Immediately, to be implemented within 120 days.

Amendment No.: 236.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 15, 1999 (64 FR 70087).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 2000.

No significant hazards consideration comments received: No.

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 application for amendments: June 1, 1999, as supplemented September 25, 1999.

Brief description of amendments: These amendments revise the St. Lucie, Units 1 and 2, Technical Specifications (TS) 3.5.2 to allow up to 7 days to restore an inoperable Low Pressure Safety Injection train to operable status.

Date of Issuance: February 15, 2000.

Effective Date: February 15, 2000.

Amendment Nos.: 164 and 106.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the TS.

Date of initial notice in **Federal Register:** June 30, 1999 (64 FR 35206). The supplemental September 25, 1999, letter provided additional information that did not expand the scope of the amendment request beyond the initial notice or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 15, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: November 17, 1999 *Brief description of amendment:* The amendment revised the technical specification (TS) surveillance testing of the safety-related ventilation system charcoal to meet the actions requested in Generic Letter 99–02, ''Laboratory testing of Nuclear-Grade Activated Charcoal,'' dated June 3, 1999.

Date of Issuance: February 17, 2000.

Effective Date: February 17, 2000.

Amendment No.: 107.

Facility Operating License No. NPF–16: Amendment revised the TSs.

Date of initial notice in **Federal Register:** January 12, 2000 (65 FR 1923).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 2000.

No significant hazards consideration comments received: No.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: December 28, 1999.

Brief description of amendment: The amendment revised Technical Specifications Table 4.4.6.1.3–1, ''Reactor Vessel Material Surveillance Program—Withdrawal Schedule.'' The revised requirement permits the withdrawal of surveillance capsule number 1 at 8 effective full-power years (EFPY) instead of the original 10 EFPY.

Date of issuance: February 15, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 90.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 14, 2000 (65 FR 2443).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 2000.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: December 16, 1999, as supplemented January 21, 2000.

Brief description of amendment: The amendment revises the Technical Specification (TS) Safety Limit Minimum Critical Power Ratio (SLMCPR) values for two recirculation pump and single-loop operation, deletes cycle specific footnotes, updates the single-loop operation Average Planar Heat Generation rate limiting values, corrects a typographical error, and deletes an obsolete reference to Siemens fuel.

Date of issuance: February 16, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 109.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 29, 1999 (64 FR 73094).

The January 21, 2000, submittal provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 2000.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 18, 1998.

Brief description of amendments: The amendments revise Bases 3/4.6.2.1, ''Containment Spray System,'' of the current Technical Specifications (TSs) and Bases 3.6.6, ''Containment Spray and Cooling Systems,'' of the improved TSs, to clarify that containment spray is not required to be actuated during recirculation, but may be actuated at the discretion of the Technical Support Center. Additionally, the Bases are clarified to state that the ability to spray containment using the residual heat removal (RHR) system is demonstrated by opening the RHR Spray Ring Cross Connect Valve 9003A or B. The Bases are clarified to state that flow to the spray headers can be established with only one operable RHR pump by closing the cold leg discharge valve 8809A or B.

Date of issuance: February 9, 2000.

Effective date: February 9, 2000.

Amendment Nos.: Unit 1—139 ; Unit 2—139.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Bases.

Date of initial notice in **Federal Register**: August 26, 1998 (63 FR 45527).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 2000.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: August 10, 1998, as supplemented by letter dated November 24, 1999.

Brief description of amendments: These amendments revise Technical Specification (TS) 3/4.3.2, Table 3.3–5, ''Engineered Safety Features Response Times,'' of the current TS to add the response times for closure of the main feedwater regulating valves (MFRVs) and MFRV bypass valves, and trip of the main feedwater pumps (MFWPs). The change would also revise TS 3/4.7.1.7 to add a limiting condition for operation, actions, and surveillance requirements for the MFWP turbine stop valves, and revise the TS 3/4.7.1.7 actions and surveillance requirements for the MFRVs, MFRV bypass valves, and main feedwater isolation valves to be consistent with the NUREG–1431 requirements. Also, the amendments revise Section 3.7.3 and its associated bases of the improved Technical Specifications (ITS).

Date of issuance: February 22, 2000.

Effective date: February 22, 2000, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—140; Unit 2—140.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 7, 1998 (63 FR 53954). The November 24, 1999, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 2000.

No significant hazards consideration comments received: No.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: November 24, 1999, as supplemented January 13, 2000.

Brief description of amendment: The amendment revises the Technical Specifications to remove the requirement for partial stroking of the main steam isolation valves twice-per-week.

Date of issuance: February 24, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 260.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 29, 1999 (64 FR 73095) The letter of January 13, 2000, provided supplemental information that did not affect the initial proposed no significant hazard consideration determination of the original notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24. 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: January 11, 1999 (PCN–499), as supplemented November 29, 1999.

Brief description of amendments: The amendments revise Technical Specification 3.7.6 to change the minimum inventory of water maintained in the condensate storage tank (T–120) from 280,000 gallons to 360,000 gallons during plant operation Modes 1, 2, and 3.

Date of issuance: February 22, 2000.

Effective date: February 22, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—162; Unit 3—153.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 18, 2000 (65 FR 2648). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: June 8, 1999 (PCN–495).

Brief description of amendments: The amendments modify the Technical Specifications to (1) reflect that charging flow is not required to mitigate the effects of design-basis small-break loss-of-coolant accidents (SBLOCAs), (2) increase the maximum as-found lift pressure positive tolerance of main steam safety valves from +1 percent to +2 percent of the setting, and (3) list the ABB Combustion Engineering Supplement 2 SBLOCA evaluation model as an acceptable method for determining linear heat rate.

Date of issuance: February 22, 2000.

Effective date: February 22, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—163; Unit 3—154

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 30, 1999 (64 FR 35210)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: January 2, 1998 (PCN–482), as supplemented December 13, 1999.

Brief description of amendments: The amendments revise Technical Specification 3.7.5 to add a note that states: The steam driven AFW [auxiliary feedwater] pump is OPERABLE when running and controlled manually to support plant start-ups, plant shut-downs, and AFW pump and valve testing.

Date of issuance: February 23, 2000.

Effective date: February 23, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—164; Unit 3—155.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register** January 19, 2000 (65 FR 2991), as corrected January 26, 2000 (65 FR 4265)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 23, 2000.

No significant hazards consideration comments received: No

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: March 19, 1999.

Brief description of amendments: These amendments relocate Technical Specification Section 3/4.8.3, ''Electrical Equipment Protective Devices,'' and the associated bases to the Technical Requirements Manual.

Date of issuance: February 22, 2000.

Effective date: As of date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: 250 and 241.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: April 21, 1999 (64 FR 19566).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 1st day of March 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5477 Filed 3–7–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24323; File no. 812–11850]

Seligman Portfolios, Inc., et al.

February 29, 2000.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of Seligman Portfolios, Inc. and shares of any other open-end investment company that is designed to fund insurance products and for which J. & W. Seligman & Co. Inc., or any of its affiliates, may serve, now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (Seligman Portfolios, Inc. and such other investment companies hereinafter referred to collectively, as ''Insurance Products Funds'') to be offered to, sold to and held by (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context.

APPLICANTS: Seligman Portfolios, Inc. (''Seligman Portfolios'') and J. & W. Seligman & Co. Inc. (''Seligman'').

FILING DATE: The application was filed on November 16, 1999, and amended and restarted on January 27, 2000, and February 25, 2000.

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 on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 23, 2000, and 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 interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 100 Park Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Susan M. Olson, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. the complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Seligman Portfolios is registered under the 1940 Act as an open-end management investment company. Seligman Portfolios was incorporated under the laws of the State of Maryland under the name Seligman Mutual Benefit Portfolios, Inc., on June 24, 1987. Seligman Portfolios is comprised of fifteen separately managed portfolios (each, a ''Portfolios''), each of which has its own investment objectives and policies. Additional Portfolios may be added in the future.

2. Seligman is an investment adviser registered with the Commission under the Investment Advisers Act of 1940 and serves as the investment adviser of each Portfolio of Seligman Portfolios.

3. Each Portfolio currently offers its shares to variable annuity separate accounts established by Canada Life Insurance Company of America and Canada Life Insurance Company of New York (together, ''Canada Life''), which are life insurance companies that are affiliates of each other. Applicants state that upon receipt of an order requested by the application, Seligman Portfolios intends to offer its shares to Canada Life variable annuity separate accounts and also to variable annuity separate accounts established by life insurance companies that are not affiliated with Canada Life. Applicants contemplate that, following the grant by the Commission of the exemptive order requested by the application, shares of each Portfolio also would be offered to one or more variable life insurance separate accounts established by insurance companies that are not affiliated with Canada Life and possibly to variable life insurance separate accounts established by Canada Life or its affiliates. Canada Life and its affiliates and the other insurance companies to which shares of the Insurance Products Funds will be offered are hereinafter referred to, collective, as ''participating Insurance Companies.''

4. Applicants state that upon the granting of the requested exemptive relief, shares of each Portfolio also would be offered directly to qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') outside the separate account context.

5. The Participating Insurance Companies will establish their own variable annuity and variable life separate accounts (the ''Separate Accounts'') and design their own variable annuity and variable life insurance contracts (''Contracts''). Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to such Insurance company under state and federal securities law. The role of the Insurance Product Funds, so far as the federal securities laws are applicable, will be to offer their shares to Participating Insurance Companies and their Separate Accounts and to Qualified Plans and to fulfill any conditions that the Commission may impose upon granting the order requested in the application.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted under Rule 6e–2(b)(15) are available, however, only when all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis supplied). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' in addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying management investment company are offered to variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.''

2. Applicants state that the basis for the relief granted by Rule 6e–2(b)(15) is not affected by the purchase of shares of the Insurance Product Funds by Qualified Plans. However, because the relief under Rules 6e–2(b)(15) and 63–3(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Insurance Product Funds are also to be sold to Qualified Plans.

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares. However, these exemptions are available only where all of the assets of the separate account consist of shares of one or more registered management investment companies which offers their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled [premium variable life insurance] contracts or flexible [premium variable life insurance] contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis supplied). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an investment company that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

4. Applicants state that because the relief granted under Rule 6e–3(T)(b)(15) is available only when shares are offered exclusively to separate accounts, exemptive relief is necessary if shares of the Insurance Product Funds are also to be sold to Qualified Plans.

5. Applicants state that changes in the tax law subsequent to the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) afford the Insurance Products Funds an opportunity to increase their asset base by selling their shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying variable annuity contracts and variable life insurance contracts held in the portfolios of the Insurance Product Funds. The Code provides that such contracts will not be treated as annuity contracts or life insurance contracts for any period (or any subsequent period) for which the investments are not, in accordance with regulations issued by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) (the ''Regulations'') which established specific diversification requirements for investment portfolios underlying variable annuity and variable life contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. However, the Regulations also contain an exception to this requirement that allows shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the status of the investment company as an adequately diversified underlying investment for variable life contracts issued through separate accounts of insurance companies (Treas. Reg. 1.817–5(f)(3)(iii)).

6. Applicants also note that the promulgation of rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations, which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same investment company to separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. In general, Section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from serving in various capacities with respect to an underlying registered management investment company. More specifically, Section 9(a)(3) provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2) of the 1940 Act. However, Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

8. Applicants state that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that it is unnecessary to apply Section 9(a) to the thousands of individuals who may be involved in a large insurance company but would have no connection with the investment company funding the Separate Accounts. Those individuals who participate in the management or administration of the Insurance Product Funds will remain the same regardless of which life insurance company Separate Accounts invest in their shares. Therefore, Applicants assert that applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants further assert that applying such restrictions would increase the monitoring costs incurred by the Participating Insurance Companies and, therefore, would reduce the net rates of return realized by Contract owners.

9. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement in limited situations, assuming the limitations on mixed and shared funding are satisfied. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company or any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority and subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard voting instructions of contract owners with regard to changes initiated by the contract holders in the investment company's investment policies, principal underwriter or any investment adviser (subject to paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

10. Applicants further represent that the Insurance Products Funds' sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. With respect to Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Applicants state that shares of the Insurance Product Funds sold to Qualified Plans would be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the plan with two exceptions: (a) When the plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions states in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

11. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some Qualified Plans, however, may provide for the trustee, or another named fiduciary to exercise voting rights in accordance with instructions from Plan participants.

12. When a Qualified Plan does not provide participants with the right to give voting instructions, Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among Contract owners and Qualified Plan participants

with respect to voting of an Insurance Product Fund's shares. Accordingly, Applicants note that unlike the case with insurance company Separate Accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

13. When a Qualified Plan provides participants with the right to give voting instructions, Applicants submit there is no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Contract owners. The purchase of shares of an Insurance Product Fund by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

14. Applicants assert that no increased conflicts of interest would be presented by the granting of the requested relief. Shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. When different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that the possibility is no different and no greater than that which exists when a single insurer and its affiliates offer their insurance products in several states, as is currently permitted.

15. Applicants state that affiliations do not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, Applicants submit that the conditions set forth in the application and included in this notice are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its Separate Account's investment in the relevant Insurance Products Funds.

16. Applicants further assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, if the Participating Insurance Company's decision to disregard Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its Separate Account's investment in that Fund, and no charge or penalty would be imposed upon Contract owners as a result of such withdrawal.

17. Applicants submit that no reason exists why investment policies of an Insurance Products Fund with mixed funding would or should be materially different from what they would or should be if such investment company or series thereof funded only variable annuity or only variable life insurance Contracts. Applicants represent that Each Insurance Products fund will be managed to attempt to achieve its investment objective, and will not be managed to favor or disfavor any particular insurer or type of Contract.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance Contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. Those diversities are of greater significance than any differences in insurance products. An investment company supporting even one type of insurance product must accommodate those diverse factors.

19. Applicants do not believe that the sale of shares to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance Contract owners.

20. A noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants state that neither the Code, nor the Regulations, nor the Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity Separate Accounts and variable life Separate Accounts all invest in the same management investment company.

21. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity Contracts, variable life insurance Contracts and Qualified Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or Qualified Plan cannot net purchase payments to make the distributions, the Separate Account or the Plan will redeem shares of the Insurance Product Funds at their net asset value in conformity with Rule 22c–1 under the 1940 Act. The Participating Life Insurance Company will make distributions in accordance with the terms of the variable Contract, and the Qualified Plan will make distributions in accordance with the terms of the Plan.

22. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving voting rights to Separate Account Contract owners and to Qualified Plans. Applicants represent that the transfer agent for the Insurance Products Funds will inform each Participating Insurance Company of its share ownership in each Separate Account, as well as inform the trustees of Qualified Plans of their holdings. The Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T). Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of Insurance Products Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds offered to the general public.

23. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a Qualified Plan participant. As noted above, regardless of the rights and benefits of Qualified Plan participants, or Contract holders under Contracts, the Qualified Plans

and the Separate Accounts have rights only with respect to their respective shares of the Insurance Products Funds. They can only redeem such shares at their net asset value. No shareholder of any Insurance Products funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

24. Applicants submit that there are no conflicts between the Contract owners of the Separate Accounts and the Qualified Plan participants with respect to state insurance commissioners' veto powers over investment objectives. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their Separate Accounts out of one fund and invest in another. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Qualified Plans can make the decision quickly and redeem their shares from an Insurance Products Fund and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Therefore, Applicants conclude that even if there should arise issues where the interests of Contract holders and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, on their own, redeem the shares out of the Insurance Products Funds.

25. Applicants also assert that there is no greater potential for material irreconcilable conflicts arising between the interests of Qualified Plan participants and variable Contract owners from possible future changes in federal tax laws than that which already exists between variable annuity and variable life insurance Contract owners.

26. Applicants state that various factors have kept some insurance companies from offering variable annuity and variable life insurance Contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Contract business on their own. Applicants submit use of the Insurance Products Funds as common investment media for Contracts would alleviate these concerns. Participating Insurance Companies would benefit not only from the investment advisory and administrative expertise of Seligman, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Products Funds available for mixed and shared funding may encourage more insurance companies to offer Contracts. This should result in increased competition with respect to both Contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants assert that Contract owners would benefit because mixed and shared funding should benefit Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Moreover, sale of the shares of Insurance Products Funds to Qualified Plans should result in an increased amount of assets available for investment by such Funds. This, in turn, should inure to the benefit of Contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new Portfolios more feasible.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Trustees or Board of Directors (each, a ''Board'') of each Insurance Products Fund will consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Insurance Products Fund for the existence of any material irreconcilable conflict between and among the interests of the Contract owners of all Separate Accounts and the interests of participants in Qualified Plans investing in the Insurance Product Funds and determine what action, if any, should be taken in response to any of those conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Products Funds are being managed; (e) a difference in voting instructions given by variable annuity Contract owners and variable life insurance Contract owners and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of plan participants.

3. Participating Insurance Companies and Qualified Plans that execute a fund participation agreement upon becoming an owner of 10% or more of an Insurance Products Fund's shares (''Participants'') and Seligman (or any other investment adviser of an Insurance Products Fund) will report any such potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by a Participating Insurance Company to inform the Board whenever it has determined to disregard Contract owner voting instructions, and, when pass-through voting is applicable, an obligation of each Qualified Plan to inform the Board whenever it has determined to disregard voting instructions from participants in the Qualified Plans.

4. The responsibilities to report such conflicts and information and to assist the Board will be contractual obligations of all Participants investing in Insurance Product Funds under their agreements governing participation in the Insurance Product Funds, and these responsibilities will be carried out with a view only to the interests of Contract owners, and, if applicable, participants in Qualified Plans.

5. If it is determined by a majority of the Board of an Insurance Products Fund, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participants will, at their expense and to the extent reasonably

practicable (as determined by a majority of the disinterested Board members), take whatever steps are necessary to remedy or eliminate the material conflict, including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Insurance Products Fund or any series and reinvesting such assets in a different investment medium, which may include another series of an Insurance Products Fund or another Insurance Products Fund; (b) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed Separate Account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Contract owners' voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Insurance Products Fund, to withdraw its Separate Account's investment in such fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Products Fund, to withdraw its investment in such Insurance Products Fund, with no charge or penalty imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of a material irreconcilable conflict and bearing the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Insurance Products Funds, and these responsibilities will be carried out with a view only to the interests of Contract holders and Qualified Plan participants.

6. For purposes of Condition 5, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Products Fund, Seligman or any of their respective affiliates be required to establish a new funding medium for any Participant. No Participating Insurance Company or Qualified Plan will be required by Condition 5 to establish a new funding medium for any contract if a majority of Contract owners materially and adversely affected by the irreconcilable material conflict vote to decline this offer. No Qualified Plan shall be required by Condition 5 to establish a new funding medium for any such Plan if: (i) A majority of Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer or (ii) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan makes the decision without Qualified Plan participant vote.

7. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly in writing to all Participants and Seligman.

8. Participating Insurance Companies will be provided pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of an Insurance Product Fund held in their Separate Accounts in a manner consistent with voting instructions timely received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Participating Insurance Companies will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions. Each Qualified Plan will vote as required by applicable law and its governing documents.

9. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants and Seligman of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

10. Each Insurance Products Fund will notify all Participants that Separate Account prospectus disclosure or Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund will disclose in its prospectus that: (a) the Insurance Products fund is intended to be a funding vehicle for variably annuity and variable life insurance contracts offered by various insurance companies and for Plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in an Insurance Products Fund and the interests of Qualified Plans investing in that Insurance Product Fund may conflict; and (c) the Board of that Insurance Products Fund will monitor for the existence of any material conflicts of interest and determine what action, if any, should be taken.

11. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Insurance Products Fund), and, in particular, each Fund will either provide for annual meeting (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Insurance Product Funds are not within the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent Rules 6e–2 and 6e–3(T) are amended (or Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Insurance Products Funds and the Participating Insurance Companies, as appropriate, shall be required to take

such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent applicable.

13. No less than annually, Seligman and the Participants shall submit to the Boards such reports, materials or data as such Boards may reasonably request so that the Boards may fully carry out obligations imposed upon them by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of Seligman, the Participating Insurance Companies and Qualified Plans to provide these reports, materials and data to the Boards, shall be a contractual obligation of Seligman, all Participating Insurance Companies and Qualified Plans under the agreements governing their participation in the Insurance Products Funds.

14. In the event that a Qualified Plan should ever become an owner of 10% or more of the assets of an Insurance Products Fund, the Qualified Plan will execute a fund participation agreement with the Insurance Products Fund, including the conditions set forth herein to the extent applicable. A Qualified Plan shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5556 Filed 3–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42476; File No. SR–NASD–97–89]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving the Proposed Rule Change on a Temporary Basis and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 to the Proposed Rule Change on a Temporary Basis Relating to Bond Mutual Fund Volatility Ratings

February 29, 2000.

I. Introduction

On October 5, 1998,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the NASD Regulation, Inc. (''NASD'' or ''Regulation'' or ''NASDR''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to permit members and associated persons to include bond mutual fund volatility ratings in supplemental sales literature for an 18 month trial period.

A notice of the proposed rule change appeared in the **Federal Register** on November 5, 1998.[4] The Commission received fourteen comment letters concerning the proposed rule change.[5] On November 9, 1998, NASDR filed Amendment No. 2 to clarify a formatting change to NASD Conduct Rule 2210(c).[6] On March 26, 1999, the NASDR filed amendment No. 3, in which it responded to the comment letters and amended the definition of Bond Mutual Fund Volatility Rating to clarify which funds would be subject to the proposal.[7] On August 18, 1999, NASDR filed Amendment No. 4, which amended subsections (b)(1) and (b)(3) by removing language that several commenters found misleading and confusing.[8] This order approves the proposed rule change. Amendment Nos. 3 and 4 are also approved on an accelerated basis.

II. Background

Bond mutual fund volatility ratings are descriptions of the sensitivity of bond mutual fund portfolios to changing market conditions. Currently, NASDR interprets its rules to prohibit members and associated persons from using bond mutual fund volatility ratings in supplemental sales literature. NASD rules do not apply to the use and dissemination of bond mutual fund volatility ratings by non-NASD members, including rating agencies and information vendors that issue the ratings, and mutual fund groups that use the ratings for promotional and marketing purposes.

Specifically, NASD Rule 2210 prohibits the use by members and associated persons of information that is misleading, that contains exaggerated, unwarranted or misleading statements or claims, or that predicts or projects investment results.[9] The NASD currently prohibits the use of bond mutual fund volatility ratings because it believes that judgments of how a bond mutual fund may react to changes in various market conditions may be predictive of fund performance or misleading.

In Notice to Members 96–84 (December 1996), the NASD requested comment on the appropriateness of its current prohibition. A majority of the

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[1] On December 12, 1997, the NASD submitted its initial proposal, which could have limited the effectiveness of the disclosure statement and prevented sales literature from containing relevant explanatory information concerning bond mutual fund volatility ratings. After discussions between NASD and the Commission, the NASD field Amendment No. 1 on October 5, 1998, which replaced and superseded the initial proposal.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Rel. No. 40627 (November 2, 1998), 63 FR 60431.

[5] *See infra* note 14.

[6] Letter from John Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 30, 1998.

[7] The amendment to subsection (a) removes the reference to ''bond mutual fund'' and inserts after ''portfolio,'' the phase: ''of an open-end management investment company that invests in debt securities.'' Letter from John Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 25, 1999 (''Amendment No. 3'').

[8] The amendment to subsection (b)(1) removes the prohibition against using '' a single symbol, number or letter'' to describe volatility. The amendment to subsection (b)(3) removes the second sentence that stated, in relevant part, that ''[subjective factors] may be used solely for purposes of determining whether to issue the rating.'' *See* letter from John Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Richard C. Strasser, Assistant Director, Division of Market Regulation and Mercer E. Bullard, Assistant Chief Counsel, Division of Investment Management, Commission, dated August 18, 1999 (''Amendment N. 4''). *See also* letter from Alden S. Adkins, Senior Vice President and General Counsel NASD Regulation, to Katherine A, England, Assistant Director, Division of Market Regulation and Mercer E. Bullard, Assistant Chief Counsel, Division of Investment Management, Commission, dated November 2, 1999.

[9] NASD Manual, Conduct Rules, Rule 2210.

commenters supported making the ratings available, and all of the commenters representing investors groups supported the goal of making accurate information regarding risk and volatility characteristics of bond funds available to investors. As a result, NASDR proposed an interpretation to permit the use of bond fund volatility ratings subject to certain conditions and disclosure requirements.

III. Description of the Proposed Rule Change, including Amendment Nos. 3 and 4

Trial Period

The proposed rule change would permit, for an 18 month trial period, the use of the mutual fund volatility ratings subject to certain limitations, and provided certain disclosures are made. The NASD believes that this trial period should be a reasonable amount of time for the Advertising/Regulation Department (''Department'') to determine whether the rules have facilitated the dissemination of useful, understandable information to investors and have prevented the dissemination of inappropriate or misleading information by members and associated persons.

Definition of Bond Mutual Fund Volatility Rating

Section(a) of the proposed rule change defines the term ''bond mutual fund volatility rating'' to mean, in part, a description issued by an independent third party relating to the sensitivity of a bond mutual fund's net asset value to changes in market conditions and the general economy, based on an evaluation of objective factors regarding the fund's current characteristics and its past performance. The definition recognizes that the rating is an opinion of the fund's potential share price movement in response to various economic conditions or market situations, and not a prediction of the actual movement of a fund's share price. In Amendment No. 3, the NASDR also proposes to amend this definition to clarify that the rule applies only to open end investment companies.[10]

Prohibitions

Subsection (b) of the proposed rule change permits members and associated persons to use a bond mutual fund volatility rating only in supplemental sales literature and only when certain requirements are satisfied.

Subsection (b)(1) prohibits the use of a bond mutual fund volatility rating that uses the word ''risk'' to describe the rating. This prohibition is intended to remove any confusion concerning the word ''risk,'' which is capable of multiple meanings and interpretations. Thus, the NASDR believes that referring to these ratings as ''volatility'' rather than ''risk'' ratings is more precise. The proposal had also prohibited the use of a ''a single symbol, number or letter'' to describe the ratings. Amendment No. 4, however, removed this prohibition to provide rating agencies with more flexibility in how the ratings are presented.[11]

Subsection (b)(2) of the proposed rule change prohibits the use of a bond mutual fund volatility rating that does not incorporate the most recently available rating and that is not current.[12]

Subsection (b)(3) of the proposed rule change further prohibits the use of a bond mutual fund volatility rating that is not based exclusively on objective, quantifiable factors. This subsection also requires that the rating and the disclosure statement that accompanies it be clear, concise, and understandable. This requirement is intended to ensure that the rating information is presented in a way that is accessible and informative to the investor. Originally, this subsection also referred to the use of other factors that could be used to determine whether to issue the rating. Several commenters and the Commission noted that the language seemed to imply that, contrary to the language of the rule, subjective factors could also be considered in determining the rating. Accordingly, the NASDR filed Amendment No. 4 to remove this language.[13]

Subsection (b)(4) of the proposed rule change prohibits the use of bond mutual fund volatility ratings unless the supplemental sales literature containing the rating conforms to the disclosure requirements, which are described below.

Subsection (b)(5) of the proposed rule change prohibits members or associated persons of members from using bond mutual fund volatility ratings unless the entity that issued the ratings provides detailed disclosure on its rating methodology through a toll-free telephone number, a web site, or both.

Disclosure Requirements

Section (c) of the proposed rule change requires that certain disclosures accompany any bond mutual fund volatility rating used in supplemental sales literature by members or associated persons of members.

Specifically, subsection (c)(1) requires that supplemental sales literature containing a bond mutual fund volatility rating include a disclosure statement containing certain specified information required by the rule. It also permits the disclosure statement to contain any additional information that is relevant to an investor's understanding of the rating.

Subsection (c)(2) requires that supplemental sales literature containing a bond fund volatility rating include all other current volatility ratings that have been issued with respect to the same fund. Subsection (c)(2) also permits information concerning multiple ratings to be combined in the disclosure statement, provided that the applicability of the information to each rating is clear. This serves the purpose of avoiding redundant and potentially confusing information, and reduces the possibility that the rating could be buried or hidden in excess information.

Subsection (c)(3) requires that all bond mutual fund volatility ratings be contained within the text of the disclosure statement. The rating should not be located separately from the disclosure statement to avoid the risk that either could be read separately, or not at all, thereby increasing the possibility that the rating would not be understood in the context of the required disclosures.

Subsections (c)(3) (A)–(B) of the proposed rule change require that supplemental sales literature containing a bond mutual fund volatility rating disclose the names of the rating entity, the most current rating (accompanied by the date of that rating), and, if there is any change in the current rating from the most recent prior rating, an explanation of the change.

Subsection (c)(3)(C) of the proposed rule change requires that supplemental sales literature containing a bond mutual fund volatility rating describe the rating in narrative form. Under subsections (c)(3)(C) (i)–(vii), the narrative description must include: (i) A statement that there is no standard method for assigning ratings; (ii) a description of the criteria and methodologies used to determine the rating; (iii) a statement that not all bond funds have volatility ratings; (iv) whether consideration was paid in connection with obtaining the issuance

[10] *See supra* note 7.

[11] S&P notified the NASD that is planned to revise the symbology it uses to label its bond fund risk ratings. The current symbology ranges from 'aaa' to 'ccc,' which S&P planned to convert to a scale ranging from 'S1+' to 'S6.' Letter from R. Clark Hooper, Executive Vice President, Disclosure and Investor Protection, NASD Regulation, to Sanford B. Bragg, Managing Director, Standard & Poor's, dated August 3, 1999.

[12] In this context, ''current'' describes the most recent calendar quarter ended.

[13] *See supra* note 8.

of the rating; (v) a description of the types of risks the rating measures, such as short-term volatility; (vi) a statement that the portfolio may have changed since the date of the rating; and (vii) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

Filing Requirement

The proposed rule change amends NASD Rule 2210 regarding communications with the public by adding new subsection (c)(3) to require sales literature containing bond mutual fund volatility ratings to be filed with the Department for review and approval at least 10 days prior to use. Members would not be required to file advertising and sales literature that had previously been filed and approved. Members filing sales literature containing bond mutual fund volatility ratings also must provide any supplemental information requested by the Department pertaining to the rating that has been assigned to the bond fund.

IV. Summary of Comments

The Commission received fourteen comment letters from 13 commenters concerning the proposal.[14] Of these commenters, eleven expressed conditional supports for the proposal,[15] and two opposed it.[16] One commenter cited a number of articles from periodicals in support of its position that the use of volatility ratings should only be allowed if appropriate safeguards are implemented.[17] Following are the issues raised, the commenters' positions, and the NASDR's and the Commission's responses.

Trial Period

Most commenters suggested that once the 18 month trial period ends the NASDR conduct a thorough assessment of the proposal to determine whether it should be amended, eliminated, or approved.[18] Federated believes the current ban on volatility rating disclosure is unnecessary and hopes that once the trial period concludes, the results will establish a basis for more reasonable, lenient guidelines.[19] The Commission believes that the trial period will provide the Department with a reasonable amount of time to consider all feedback concerning the use of these ratings, so that a fair and accurate assessment of the proposal's effectiveness can be made. The Commission expects that the Department will keep the Commission appraised of any problems that may arise in the rating process so that they may be promptly addressed.

Clarification of Certain Terminology

There was some debate among commenters on the use of certain terminology in the proposal. Most commenters focused on what term best describes risk.[20] One commenter stated that because the proposal does not restrict the type of entity that can provide ratings, they can be obtained form any entity as long as the ratings are based on objective criteria.[21] The commenter therefore suggested that, to help ensure the quality of the entitle issuing the ratings, the NASDR consider providing guidelines (including specific definitions) for entities to follow.[22]

The NASDR contends that it has provide guidance, albeit indirectly, to entities providing ratings.[23] The proposed rule sets standards for NASD members and their associated persons by prohibiting their use of volatility rating sunless the ratings conform to the rule.[24] The Commission agrees that the proposal provides adequate guidance for NASD members and associated persons that will use these ratings in their supplemental sales literature. The Commission suggests, however, that the NASDR periodically assess the effectiveness of the proposal during the trial period to determine whether additional guidance is needed.

Additional Disclosure Requirements

Several commenters suggested that additional disclosure requirements were necessary to further clarify the meaning of the ratings and their limitations.[25] For example, MFS suggested that the rule require detailed disclosure on an entity's rating methodology and the underlying assumptions used to assess individual securities or types of securities in the fund's portfolio.[26] AARP suggested that a fund's investment philosophy and management be included in the disclosure statement. In response, the NASDR notes that these factors are already disclosed in the fund prospectus.[27] Another commenters suggested that a provision be added to require that the narrative description disclosure not only the type of risk being measured, but also how those risks relate to the stated investment goals of the fund.[28] The NASDR believes such a requirement would be inconsistent with the requirement that these ratings be based on objective, verifiable information.[29] Allowing the rating agency to provide its opinion on how the risks relate to a fund's investment objectives requires a subjective judgment that cannot be verified.[30]

Conversely, two commenters who opposed the proposal expressed doubt that any amount of disclosure would remedy the volatility ratings' inherent deficiencies.[31] For example, both commenters note that the proposal does not address the potential predictive nature of volatility ratings.[32] According to the NASDR, the possible predictive nature of the volatility ratings had been a factor in its current prohibition against the use of volatility ratings.[33] Moreover, this concern prompted the NASDR to

[14] Letters to Jonathan G. Katz, Secretary, Commission from: Martin A. Corry, Director, Federal Affairs, AARP, dated December 14, 1998 (''AARP Letter''); Lisa G. Hathaway, Compliance Associate, American Funds Distributors, Inc., dated December 9, 1998 (''AFD Letter''); Barbara L.N. Roper, Director of Investor Protection, Consumer Federation of America, dated November 30, 1998 (''CFA Letter''); John B. Hammalian, Associate General Counsel, The Dreyfus Corporation, dated November 24, 1998 (''Dreyfus Letter''); Stephen A. Keen, General Counsel, Federated Investors, Inc., dated November 30, 1998 (''Federated Letter''); David H. Potel, Vice President and Deputy General Counsel, Fidelity Investments, dated November 27, 1998 (''Fidelity Letter''); Betsy Dotson, Director, Federal Liaison Center, Government Finance Officers Association, dated November 30, 1998 (''GFOA Letter''); Craig S. Tyle, General Counsel, Investment Company Institute, dated November 30, 1998 (''ICI Letter No. 1'') and dated September 2, 1999 (''ICI Letter No. 2''); A. Michael Lipper, President, Lipper Advisory Services Inc., dated November 20, 1998 (''Lipper Letter''); James F. Des Mais, Assistant General Counsel, Legal, MFS Investment Management, dated November 30, 1998 (''MFS Letter''); Leo C. O'Neill, President and Chief Rating Officer, Standard & Poor's, dated November 30, 1998 (''S&P Letter''); Susan E. Woodward, dated November 25, 1997 (''Woodward Letter''); Henry H. Hopkins, Managing Director and Chief Legal Counsel, T. Rowe Price Associates, Inc., dated November 30, 1998 (''TRP Letter'').

[15] AARP Letter, AFD Letter, CFA Letter, Federated Letter, Fidelity Letter, GFOA Letter, ICI Letter Nos. 1 and 2, Lipper Letter, MFS Letter, S&P Letter, and Woodward Letter.

[16] Dreyfus Letter and TRP Letter.

[17] ICI Letter No. 2.

[18] *See, e.g.,* AFD Letter, pp. 1–2 and ICI Letter No. 1, p.2.

[19] Federated Letter, p. 1.

[20] *See, e.g.,* AARP Letter, P. 1, Lipper Letter, p. 1, and Woodward Letter, pp. 2–3 (discussing the terms risk and volatility and the implications of their use).

[21] *Id.* at p. 3.

[22] Dreyfus Letter, pp. 3–4.

[23] NASDR response, pp. 3–4 (responding to a similar issue raised by a different commenter).

[24] *Id.* at p. 4.

[25] *See, e.g.,* AARP Letter, CFA Letter, and MFS Letter

[26] MFS Letter, p. 2.

[27] NASDR Response, p. 2.

[28] CFA Letter, p. 5.

[29] NASDR Response, p. 2.

[30] *Id.*

[31] Dreyfus Letter, pp. 1–2 (suggesting that concerns about availability of additional disclosure information should be directed to the member firm, not the rating agency) and TRP Letter, p. 2.

[32] Dreyfus Letter, pp. 1–2 and TRP Letter, p. 3.

[33] NASDR Response, p. 3.

eliminate from the original proposal the provision allowing subjective factors to be used in the calculation of the rating.[34]

The Commission has consistently supported requirements that attempt to make meaningful information available to the investor. In this case, however, if more information were added to the disclosure statement, it is possible that the investor could be or overwhelmed with information that he fails to read any of the literature, or fails to focus on the key disclosures. The Commission is satisfied with the proposed disclosure requirements and the quality of information being made available to the investor.

Payment for Ratings

Some commenters contended that ratings prepared by independent third parties will be subject to conflicts of interest and potential misuse because the fund companies will pay for these ratings.[35] Two commenters strongly advocated a prohibition on the practice of buying ratings to ensure that the interests of the rating entity are independent of the interests of the fund being rated.[36] Lipper noted that the requirement that the fund disclose whether any payments were made for ratings should reduce, but will not completely eliminate, the incentive to shop for favorable ratings.[37] TRP noted that because funds will now have to pay for ratings, only those that are assured of the highest rating will attempt to procure one.[38] Conversely, Dreyfus contended that these ratings will not be generated if the rating agencies can not charge for them.[39]

The NASDR believes the proposal's prohibitions and substantial disclosure requirements are more than adequate to address potential conflicts of interest that may arise from the fact that the ratings are procured for a fee.[40] The Commission is concerned that rating agencies may be influenced by compensation received in providing fund volatility ratings. This concern is alleviated, however, by the requirement that the narrative description state whether consideration was paid in connection with the issuance of the ratings. Thus, the Commission is satisfied that the rule addresses potential conflicts of interest.

Presentation of Volatility Rating

Some commenters stated that the volatility rating should not be buried or hidden in the text of the required disclosure statement.[41] Two commenters believed that burying the rating in the disclosure statement increases the chances that it will not be found, as few investors thoroughly examine disclosure statements.[42] Thus, they suggested displaying the rating in a conspicuous location, with a prominent reference to the disclosure statement for particulars, to increase the chances of it being examined by investors.[43]

The NASDR believes that the appropriate point of disclosure for the rating is within the text of the disclosure statement.[44] They note that the proposal requires any rating to be filed with the Department for pre-use review.[45] The Department will, therefore, have an opportunity to review whether the rating is prominently displayed or inconspicuous and determine whether to recommend changes to the disclosure statement prior to use.[46] The Commission notes that the NASDR has not outlined the standards for pre-use review. However, the Commission expects that the NASDR will conduct a thorough review of all submitted sales literature containing volatility ratings to ensure compliance with the disclosure requirements.

Applicability of proposal to ''in-house'' ratings

The NASDR requested comment on whether the descriptions of risk and volatility that mutual fund complexes currently provide for their own funds *i.e.,* in-house ratings) should be subject to the provisions of the proposed rule change.[47] Two commenters suggested that risk or volatility ratings currently developed in-house resemble those provided by independent parties.[48] Because of the similarities between these ratings and the fact that funds often fail to disclose the methodologies used to determine their in-house ratings, both commenters suggested that volatility ratings developed in-house should be subject to the disclosure requirements of the proposal.[49] Moreover, CFA believed that fund companies should not be allowed to use in-house risk or volatility ratings without also disclosing those ratings issued by independent third parties that conflict with the in-house rating.[50]

Conversely, several commenters opposed subjecting current in-house risk disclosures to the requirements of the proposal.[51] These commenters believed that in-house ratings are used primarily as an educational tool for investors to compare the different types of funds within a fund family.[52] Volatility ratings, they content, are used by funds as a marketing tool to distinguish their fund from similar fund families.[53] Thus, according to ICI, in-house ratings do not present the same potential for abuse as volatility ratings and therefore should not be subject to the proposal.[54]

NASDR does not intend to apply the proposed rule to fund companies' in-house risk rating.[55] According to NASDR, these ratings are not procured for a fee, are used primarily by fund investors as an aid in distinguishing between risk levels within a family of funds, and may be calculated using different methods from those used in calculating volatility ratings.[56] The Commission preliminarily agrees with the NASDR that in-house risk ratings need not be subject to the proposed rule because they are primarily used by investors to distinguish between funds in a family of funds, but notes that the NASDR will reconsider at the conclusion of the trial period whether to apply the proposed rule to in-house ratings.[57]

One commenter also wanted the NASDR to clarify that the proposal only applied to open-end investment companies (*i.e.,* mutual funds) and not to other types of investment companies (*e.g.,* unit investment trusts).[58] For the trial period, the NASDR intends for the

[34] *Id.*

[35] *See, e.g.,* AFD Letter, CFA Letter, and ICI Letter No. 1.

[36] AFD Letter, pp. 1–2 and ICI Letter No. 1, p. 5.

[37] Lipper Letter, p. 1.

[38] TRP Letter, p. 2.

[39] Dreyfus Letter, p. 5 (noting that payment would only be a material issue if subjectivity were an element in the process).

[40] NASDR Response, p. 2.

[41] GFOA Letter, p. 3, S&P Letter, pp. 2–3, and Woodward Letter, p. 3.

[42] GFOA Letter and S&P Letter, *supra* note 41.

[43] GFOA Letter and S&P Letter, *supra* note 41.

[44] NASDR Response, p. 4.

[45] Proposed Rule 2210(c)(3) would require that sales literature containing these volatility ratings by filed with the Department for review and approval at least 10 days prior to use.

[46] NASDR Response, p. 4.

[47] *See* Securities Exchange Act Rel. No. 40627, *supra* note 4, at 60433.

[48] CFA Letter, p. 3 and S&P Letter, p. 3. CFA also noted that because in-house ratings and those of ratings agencies can be similar, fund companies could use in-house ratings in lieu of independent ratings with which they disagree.

[49] CFA Letter and S&P Letter, *supra* note 48.

[50] CFA Letter, p. 3.

[51] Dreyfus Letter, p. 5, ICI Letter No. 1, p. 7, and TRP Letter, p. 3.

[52] ICI Letter No. 1, p. 7 and TRP Letter, p. 3.

[53] ICI Letter and TRP Letter, *supra* note 52.

[54] ICI Letter and TRP Letter, *supra* note 52. TRP notes that these ratings have been filed with and reviewed by the NASD with no previously known objections.

[55] NASD Response, p. 2.

[56] *Id.*

[57] *Id.*

[58] ICI Letter No. 1, p. 6.

proposed rule to apply only to open-end investment companies.[59] The NASDR will decide at the conclusion of the trial period whether to apply the rule to all investment companies.[60] However, until then, the NASDR proposes to amend the definition of Bond Mutual Fund Volatility Rating to clarify that the proposed rule change only applies to open-end investment companies.[61] The Commission is satisfied with the NASDR's determination that, for the duration of the trial period, the proposal will apply only to open-end investment companies.

Prohibitions

Several commenters offered their conditional support for the proposal, provided that all or substantially all of the prohibitions remained intact.[62] After discussions with the Commission, however, the NASDR, has amended the proposal to remove text from two of the prohibitions that several commenters supported.[63] Amendment No. 4 removes the prohibition from subsection (b)(1) against using a single symbol, number, or letter to describe a rating. This amendment clarifies the intended application of this section and provides greater flexibility to members in the use of appropriate symbols for their ratings.[64] The amendment also removes text from subsection (b)(3) that might cause confusion regarding the requirement in subsection (b)(3) that the rating be based on objective, quantifiable factors.

The Commission believes that amended subsection (b)(1) provides the rating agencies with appropriate flexibility. Several commenters suggested that investors were more likely to rely on ratings conveyed in the form of a number or symbol without fully understanding their meaning or significance.[65] The Commission notes, however, that the proposal still requires that the sales literature include a description of the rating in narrative form. The description must include certain disclosures, which should decrease the likelihood of investor confusion concerning a rating's meaning.

Concerning amended subsection(b)(3), the Commission believes the language is now clear that subjective factors should not be used to determine a rating.[66] The NASD stated that it eliminated subjective factors to ensure that any ratings issued during the trial period could be verified and replicated.[67] While most commenters agreed that only objective, quantifiable factors should be used to determine a rating, one commenter noted that this requirement would still allow fund entities to base their ratings on *different,* objective criteria.[68] Another commenter also suggested that the NASD address how it will monitor compliance with subsection (b)(3) and define what an ''objective'' factor is.''[69]

NASDR believes it would be inappropriately constrictive to define what an ''objective'' factor is, other than to say that such factors should relate to information that is objectively determinable and should permit replication of ratings by third parties.[70] NASDR states that it will monitor compliance by requiring that all volatility ratings be submitted to its Department for pre-use review.[71]

The Commission believes that, during the trial period, rating agencies should be allowed to determine what qualifies as objective criteria, consistent with the NASDR's guidelines, and which objective criteria they should use to calculate the rating.[72] The proposal eliminates the use of subjective, qualitative factors, but does not prevent rating agencies from using their reasonable discretion in selecting which objective criteria to use to calculate a rating. The Commission reiterates that the onus is on the NASD member or associated person to make certain that all required information outlined in the proposal is disclosed so that the rating can be replicated and that the basis for any inconsistencies is readily apparent. The trial period should provide enough time to determine whether additional standards or guidelines are needed to prevent investor confusion or minimize excessive variability among ratings of similar portfolios.

V. Discussion

As discussed above, the Commission finds the proposed rule change is consistent with the Act and the rules and regulations thereunder.[73] Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6)[74] of the Act, which requires that the NASD adopt rules that are designed to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will remove impediments to a free and open market by allowing independent third parties to issue ratings of bond mutual funds based on an evaluation of objective criteria regarding a fund's performance and characteristics. The Commission also believes the various disclosure requirements outlined in the proposal will protect investors and the public interest by providing the information necessary to make an informed decision about a particular bond fund.

The proposed rule change, by imposing certain prohibitions, disclosure, and filing requirements, is designed to permit members and associated persons of members to disseminate bond mutual fund volatility ratings is supplemental sales literature according to standards designed to prevent such ratings from being misleading, predictive, or otherwise inappropriate. The Commission finds that the 18 month trial period is sufficient time to implement the proposed rule change and to determine, based on participation and subsequent feedback, whether the process should continue unchanged or whether modifications are necessary.

The Commission finds that the amended definition of bond mutual fund volatility ratings provides appropriate guidance concerning the type of funds to which the interpretation would apply during the trial period. Given the array of investment vehicles falling within the term ''bond mutual fund,'' Amendment No. 3 provides the necessary clarity on the scope of investments to which this rule applies.

[59] NASDR Response, p. 4.

[60] *Id.*

[61] *See supra* note 7.

[62] AFD Letter, pp. 1–2, ICI Letter No. 1, p. 4 and MFS Letter, p.2.

[63] Amendment No. 4, *supra* note 8.

[64] *Id.* at p. 1.

[65] AFD Letter, p. 2, CFA Letter, p. 4, and ICI Letter No. 1, pp. 2–3.

[66] *But see* GFOA Letter, p. 2 and Woodward Letter, p. 3 (stating that agencies should be allowed to use the tools they deem appropriate in assessing risk).

[67] NASDR Response, p. 5.

[68] TRP Letter, p. 2. TRP believes this lack of uniformity will ultimately lead to investor confusion, if similar bond funds receive different ratings.

[69] Dreyfus Letter, p. 4.

[70] NASDR Response, p. 3.

[71] *Id.*

[72] The Commission recognizes that without providing an exhaustive list of objective criteria for the agencies to use, similarly-situated bond funds may receive different ratings. However, the Commission is satisfied that the disclosure statement, which should include a description of the criteria and methodologies used, will provide the Department and investors with the requisite information to replicate the rating. Thus, the potential lack of uniformity in ratings and potential investor confusion should be mitigated by the proposal's required disclosures.

[73] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[74] 15 U.S.C. 78*o*–3(b)(6)

The Commission also finds that the prohibitions and Amendment No. 4 strike an appropriate balance. The proposed rule change and the amendment refrain from imposing a specific standard on descriptions (*i.e.,* removing the prohibition against use of a single symbol, number, or letter) or calculations of ratings in recognition of the fact that there is no specified or uniform range of information used by all rating entities, and that rating entities should be allowed to develop competing methods and models of assessing volatility. The amendment also eliminates the use of subject factors from the volatility calculation, thereby reducing the potential variability of ratings, and limiting the ability of funds to ''shop around'' for the most favorable rating.

The proposal, however, also imposes certain disclosure requirements that should assist investors in determining whether a fund is appropriate for them based on their investment objectives. The disclosure required by subsections (c)(3)(C)(i)–(vii) of the rule will help inform investors of certain potential limitations of a rating (*e.g.,* that a rating may have been paid for, may measure only a certain type of risk or volatility, may not reflect a comparison with all funds of a given class or peer group, and may not reflect a fund's current portfolio). The Commission believes that the requirement that any change in the rating and the reasons for the change be disclosed is important for investors in making informed investment decisions. Thus, the Commission finds that the proposed rule change, in providing access to this supplemental information, should enable investors to obtain answers to questions regarding the meaning of the rating or how it is calculated or derived.[75]

The Commission also finds that the requirement that sales literature containing volatility ratings be filed at least 10 days prior to use should provide the Department with sufficient time to review the sales material for compliance with the proposal's requirements. The Commission expects a thorough review of all sales literature to be conducted and accurate records to be maintained by the NASDR to facilitate the possible assessment of the rating process.

Finally, the Commission believes this proposal represents the best mechanism for disseminating information about bond mutual funds risk to investors. Risk ratings are an important source of information for investors because they can potentially determine the likelihood of gains or losses in the market value of a particular fund. As such, the Commission believes they can be useful tools for investors to aid in making informed investment decisions. Thus, the Commission finds that it is in the public interest to facilitate the dissemination of this information in an environment that encourages disclosure and enhances competition.

The Commission also finds good cause for approving proposed Amendment Nos. 3 and 4 prior to the thirtieth day after the date of the publication of notice of filing thereof in the **Federal Register**. The amendments remove ambiguous language that could hinder understanding of the proposal's applicability by clarifying which types of funds can be subject to the ratings process. The amendments also specify what types of criteria can be used to determine the ratings, while simultaneously providing some flexibility in how the rating agencies provide their services. The Commission believes that these amendments should help make the ratings provided more objective and enhance the disclosures made in the sales literature. Furthermore, the Commission finds that these amendments should enhance competition among those entities issuing the ratings. Thus, the Commission believes the approval of the amendments should not be delayed. For theses reasons, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect tot he proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal offices of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 29, 2000.

VI. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15A(b)(6).

It is Therefore Ordered, pursuant to Section 19(b)(2)[76] of the Act, that the proposed rule change (SR–NASD–97–89), be, and hereby is, approved for an 18 month trial period, which ends on August 31, 2001. Amendment Nos. 3 and 4 are also approved on an accelerated basis for an 18 month trial period, which also ends on August 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[77]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5557 Filed 3–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42481; File No. SR–NASD–00–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Extension of Certain Nasdaq Services and Facilities Until 6:30 P.M. Eastern Time

March 1, 2000.

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 February 29, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the

[75] The Commission emphasizes that sales literature is no substitute for a fund's prospectus and, if investors have not received one, they should request a current prospectus to review in conjunction with the sales materials.

[76] 15 U.S.C. 78s(b)(2).

[77] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq filed the proposed rule change to extend, through October 1, 2000, its pilot program which makes available several Nasdaq services and facilities until 6:30 p.m. Eastern Time. Nasdaq has designated this proposal as non-controversial, and requests that the Commission waive both the 5-day pre-filing notice requirement and the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act,[6] to allow the proposal to be both effective and operative immediately upon filing with 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, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to extend, through October 1, 2000, its after-hours pilot program that makes available certain Nasdaq systems and facilities until 6:30 p.m. Eastern Time.[7] The Commission approved the pilot on October 13, 1999. The pilot will continue to operate under the same terms and conditions as set forth in SR–NASD–99–57.[8]

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A(b)(6) of the Act[9] 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 regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become immediately operative upon filing, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq's after-hours pilot to operate without interruption through October 1, 2000, thereby allowing Nasdaq to continue to make available services and facilities that increase the transparency and oversight of trading taking place outside of traditional market hours. For these reasons, the Commission finds good cause to waive the 5-day pre-filing requirement, and to designate that the proposal become operative immediately.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–07 and should be submitted by March 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5558 Filed 3–7–00; 8:45 am]

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[5] Nasdaq provided written notice to the Commission on February 28, 2000, that it intended to file this proposal. The Commission agreed to waive the 5-day pre-filing notice requirement. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (SR–NASD–99–57).

[8] *Id.*

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, these notices announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before May 8, 2000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the

agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Pam Swilling, Program Review Analyst, Office of Surety Guarantees, Small Business Administration, 409 3rd Street, SW, Suite 8600, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Pam Swilling, Program Review Analyst, 202–205–6546 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION: *Title:* ''Surety Bond Guaranty Agreement, Preferred Lenders Program''.

Form No's: 990, 991, 994, 994B, 994C, 994F and 994H.

Description of Respondents: Small Business Contractors Applying for the Surety Bond Guarantee Program.

Annual Responses: 55,000.

Annual Burden: 28,837.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Betty J. Smith, Administrative Specialist, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW, Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Betty J. Smith, Administrative Specialist, 202–205–6491 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION: *Title:* ''Lender Transcript of Account''.

Form No: 1149.

Description of Respondents: SBA Guaranty Lenders.

Annual Responses: 3,752.

Annual Burden: 3,752.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Carol A. Cordova, Employment, Office of Human Resources, Small Business Administration, 409 3rd Street, SW, Suite 4200, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol A. Cordova, Employment, 202–205–6162 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION: *Title:* ''U.S. Small Business Administration's Applicant Survey''.

Form No: 1843.

Description of Respondents: Persons seeking employment with SBA.

Annual Responses: 75.

Annual Burden: 13.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Gail A. McDonald, National Ombudsman, Office of the Ombudsman, Small Business Administration, 409 3rd Street, SW, Suite 8000A, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gail A. McDonald, Ombudsman, 202–205–7360 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION: *Title:* ''Small Business and Agriculture Regulatory Enforcement Appraisal Form''.

Form No: 1993.

Description of Respondents: Small Businesses that need to comment on Agencies Policies and Practices.

Annual Responses: 1000.

Annual Burden: 500.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–5601 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3238]

State of Alaska

The Chugach Regional Education Attendance Area (REAA #21) and the contiguous political subdivisions of Copper River (REAA #17); the City and Borough of Yakutat; Matanuska/Susitna Borough; the Municipality of Anchorage, and Kenai Peninsula Borough in the State of Alaska constitute a disaster area as a result of damages caused by winter storms, heavy snow, high winds, and avalanches beginning on December 19, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 24, 2000 and for economic injury until the close of business on November 24, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.625%

Homeowners Without Credit Available Elsewhere: 3.812%

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: 6.750%

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%

The numbers assigned to this disaster are 323811 for physical damage and 9G7200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 23, 2000

Aida Alvarez,

Administrator.

[FR Doc. 00–5562 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3237]

State of Georgia (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency dated February 22, 2000, the above-numbered Declaration is hereby amended to include Decatur County, Georgia as a disaster area due to damages caused by severe storms and tornadoes that occurred on February 14, 2000.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Miller and Seminole in Georgia, and Jackson County, Florida may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is April 15, 2000 and for economic injury the deadline is November 15, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: February 24, 2000.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 00–5563 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

(Declaration of Disaster #3239)

Commonwealth of Massachusetts (and a Contiguous County in the State of New Hampshire)

Middlesex County and the contiguous Counties of Essex, Norfolk, Suffolk, and Worcester in Massachusetts, and Hillsborough County, New Hampshire constitute a disaster area as a result of damages caused by a fire that occurred on February 9, 2000 in the City of Newton. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 24, 2000 and for economic injury until the close of business on November 24, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.625%
Homeowners Without Credit Available Elsewhere: 3.812%
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: 6.750%

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%

The numbers assigned for physical damages are 323905 for Massachusetts and 324005 for New Hampshire.

For economic injury the numbers are 9G7300 for Massachusetts and 9G7400 for New Hampshire.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 24, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–5564 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3241]

State of Ohio (and Contiguous Counties in the Commonwealth of Kentucky)

Scioto County and the contiguous Counties of Adams, Jackson, Lawrence and Pike in the State of Ohio, and Greenup and Lewis Counties in Kentucky constitute a disaster area due to damages caused by heavy rain that occurred on February 18, 2000. Applications for loans for physical damage may be filed until the close of business on April 28, 2000 and for economic injury until the close of business on November 28, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.625%
Homeowners Without Credit Available Elsewhere: 3.812%
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: 6.750%

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%

The numbers assigned for physical damages are 324106 for Ohio and 324206 for Kentucky. For economic injury the numbers are 9G7500 for Ohio and 9G7600 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 28, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–5565 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3243]

Commonwealth of Pennsylvania (and Contiguous Counties in West Virginia)

Washington County and the contiguous Counties of Allegheny, Beaver, Fayette, Greene, and Westmoreland in the Commonwealth of Pennsylvania, and Brooke, Hancock, Marshall, and Ohio in West Virginia constitute a disaster area as a result of damages caused by flooding that occurred on February 19, 2000. Applications for loans for physical damage from this disaster may be filed until the close of business on May 1, 2000 and for economic injury until the close of business on November 29, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.625%
Homeowners Without Credit Available Elsewhere: 3.812%
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: 6.750%

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%

The numbers assigned to this disaster for physical damage are 324306 for Pennsylvania and 324406 for West Virginia. For economic injury the numbers are 9G7700 for Pennsylvania and 9G7800 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 29, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–5566 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9G79]

State of Washington

Skagit County and the contiguous Counties of Chelan, Island, Okanogan, Snohomish, and Whatcom in the State of Washington constitute an economic injury disaster area due to an oil spill occurring on October 29, 1999 and a mudslide occuring on December 12, 1999, which resulted in multiple road closures on Highway 20. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on November 29, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February, 29, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–5567 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Advisory Council Meeting; Public Meeting

The U.S. Small Administration National Advisory Council, will hold the National Advisory Council Meeting on April 10, 2000 through April 12, 2000, at the Hyatt Regency Hotel located at 2 West Bay Street, Savannah, Georgia to discuss matters as may be presented by members of the National Advisory Council.

For further information, write or call Kimberly Mace, Staff Assistant, U.S. Small Business Administration. 409 3rd Street, South West, Washington, DC 20416, (202) 401–8252.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–5561 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Western States Regional Fairness Board Public Hearing

Date: March 30, 2000.

Location: Maricopa Community College, 2411 W. 14th Street, Tempe, AZ 85281.

Time: 1:00 p.m.

The Space is being donated by the Community College.

Purpose: To receive comments and testimony from small businesses and representatives of trade associations concerning regulatory enforcement or compliance taken by federal agencies.

Note: Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

Contact: Gary P. Peele (312) 353–0880.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–5560 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Region 1 Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region 1 Advisory Council, located in the geographical area of Augusta, will hold a public meeting at 10:00 a.m. on Tuesday March 14th, 2000 at the Resource Hub, 441 Congress Street, Portland, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mary McAleney, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, 207–622–8378.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–5559 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Region V District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region V District Advisory Council, located in the geographical area of Minneapolis/St. Paul, Minnesota, will hold a public meeting on March 10th at 11:30 a.m., at The Ground Round, 1500 East 78th Street, Richfield, Minnesota to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For further information, write or call Nancy Gilbertson, Deputy District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370–2319.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–5568 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 21–23A, Airworthiness Certification of Civil Aircraft, Engines, Propellers, and Related Products Imported to the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This document announces the availability of and requests comment on a proposed revised advisory circular (AC) that provides information on the Federal Aviation's (FAA) objectives, regulations, and general practices for United States of America (U.S.) airworthiness certification or acceptance of civil aeronautical products imported to the U.S. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received no later than May 8, 2000.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration (FAA), Attention: Marilyn DonCarlos, International Airworthiness Program, AIR–4, Aircraft Certification Service, 800 Independence Avenue S.W., Washington, DC 20591. Comments may be inspected at the above address between 8:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marilyn DonCarlos, International Airworthiness Program Staff, AIR–4, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Ave., S.W., Washington, DC 20591: telephone (202) 267–3319; fax (202) 267–3319; e-mail marilyn.doncarlos@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the AC by title and submit comments in duplicate to the address specified above. The Aircraft Certification Service will consider all communications received on or before the closing date for comments before issuing the final AC.

Availability of Proposed AC

Requests for copies should be directed to the person named above under the

caption **FOR FURTHER INFORMATION CONTACT**. Please specify whether a paper copy or an e-mailed copy is needed.

Discussion

The proposed revisions to the advisory circular (AC) provide a convenient source of current policies, guidance, and practices for U.S. airworthiness certification and acceptance of civil aeronautical products imported to the U.S. Since the publication of current AC 21–23 in 1987, a new format of bilateral aviation agreement, the Bilateral Aviation Safety Agreement (BASA), has been established. A BASA consists of an Executive Agreement, signed by the Department of State and its foreign counterpart, and one or more Implementation Procedures (e.g., for airworthiness, maintenance, flight simulators, environmental approval) signed by the FAA and its foreign civil aviation counterpart. Both a BASA and its predecessor, a Bilateral Airworthiness Agreement (BAA), are intended to facilitate reciprocal airworthiness certification of civil aeronautical products imported or exported between the two signatory countries. Both are based on a high degree of mutual confidence in the technical competence and regulatory capability of the aviation authority of the exporting country for performing aircraft certification functions within the scope of the agreements, but a BASA is more flexible, because if allows for later expansion into other FAA regulatory disciplines. The FAA's objective in issuing this proposed revised AC is to provide guidance on the current procedures and requirements for design and airworthiness approvals of aviation products imported to the United States, including requirements in BASA Implementation Procedures for Airworthiness.

Issued in Washington, DC, on March 3, 2000.

Mary Cheston,

Manager, International Airworthiness Programs Staff, AIR–4.

[FR Doc. 00–5599 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Metro-North Commuter Railroad & Connecticut Department of Transportation

[Docket Number FRA–2000–6778]

Metro-North Commuter Railroad (MNCW) and the Connecticut Department of Transportation (CDOT) seek a temporary waiver of compliance with the Passenger Equipment Safety Standards, 49 CFR Part 238.235, which requires that by December 31, 1999, each power operated door that is partitioned from the passenger compartment shall be equipped with a manual override adjacent to that door. They request that the waiver be granted for 159 passenger coaches equipped with power operated side doors outside the passenger compartment. The waiver if granted would grant an extension of time until July 1, 2001, for the installation manual overrides.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2000–6778) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC. on February 24, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–5537 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Mount Dora Scenic Railway Company

[Docket Number FRA–2000–6850]

Mount Dora Scenic Railway Company seeks a permanent waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR 223.9, which requires certified glazing, for two locomotives (self propelled railway motor cars) utilized in excursion service on the Mount Dora Scenic Railway in Mount Dora, Florida. Mount Dora indicates that they would provide front and rear facing windows with FRA Type I glazing but would like to equip the side facing windows with safety glazing. They state that the two motor cars are not air conditioned, and the passenger compartment side windows can be opened.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2000–6850) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will

be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on February 24, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–5539 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Docket Number FRA–2000–6848]

Union Pacific Railroad Company (UP) seeks a permanent waiver of compliance with the Blue Signal Protection of Workers, 49 CFR Part 218.29(a)(3), which requires that as part of an alternate method of protection ''a blue signal must be attached to each controlling locomotive at a location where it is readily visible to the engineman or operator at the controls of that locomotive.'' UP requests that at their Hinkle Locomotive Facility located in Hermiston, Oregon, they be allowed to designate the east and west locomotive at the respective end of each repair track as the controlling locomotive regardless of it being set up in control.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2000–6848) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on February 24, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–5538 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33811]

Wisconsin Central Transportation Corporation—Continuance in Control Exemption—Wisconsin Chicago Link Ltd.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323–25, the control by Wisconsin Central Transportation Corporation of Wisconsin Chicago Link Ltd, a Class III rail common carrier, subject to the employee protection conditions in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

DATES: The exemption will be effective April 7, 2000. Petitions for stay must be filed by March 20, 2000. Petitions for reconsideration must be filed by March 28, 2000.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Finance Docket No. 33811 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K. Street, N.W., Washington, DC 20423–0001. In addition, send one copy of any comments to applicant's representative: Thomas J. Litwiler, Oppenheimer Wolff & Donnelly (Illinois), Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600 [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da-to-Da Office Solutions, 1925 K Street, NW, Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.''

Decided: February 29, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–5374 Filed 3–7–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. BTS–99–5889]

Motor Carrier Financial and Operating Information; Requests for Exemption From Public Release of Reports

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: Class I and Class II motor carriers of property and household goods are required to file annual and quarterly reports with the Bureau of Transportation Statistics (BTS). As provided by statute, carriers may request that their reports be withheld from public release. On September 3, 1999, BTS invited comments on several requests submitted by carriers (64 FR 48452). BTS has issued its decisions and these are available through the DOT Dockets Management System. Please follow the instructions listed below.

ADDRESSES: You can read BTS's decision on the exemption requests using the DOT Dockets Management System. This is located at the Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, and is open from 10 a.m. to 5 p.m., Monday through

Friday, except federal holidays. Internet users can access the Dockets Management System at http://dms.dot.gov. Please follow the instructions online for more information and help. The exemption requests and public comments on them are also available through this system.

FOR FURTHER INFORMATION CONTACT: David Mednick, K–1, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–8871; fax: (202) 366–3640; e-mail: david.mednick@bts.gov.

Rolf R. Schmitt,

Associate Director for Transportation Studies.

[FR Doc. 00–5653 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0563]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before April 7, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0563.''

SUPPLEMENTARY INFORMATION:

Title: Army Chemical Corps Vietnam Veterans Health Study, Phase II, VA Form 10–20998(NR).

OMB Control Number: 2900–0563.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: A contractor to VA will conduct telephone surveys, analyze serum for TCDD, retrieve medical records and provide automated databases to VA. VA researchers will use the study data to determine whether there are indications that Army Chemical Corps Vietnam veterans suffer from illnesses at higher or unusual rates than Vietnam era Army Chemical Corps veterans. The relationship between health outcomes and possible exposure to herbicides will also be evaluated.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 22, 1999, at page 33345.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,448 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 4,895.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0563'' in any correspondence.

Dated: February 16, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–5570 Filed 3–7–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 65, No. 46

Wednesday, March 8, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

THE PRESIDENT

3 CFR

Executive Order 13146 of February 29, 2000

President's Council on the Future of Princeville, North Carolina

Correction

In Executive Order 13146 of February 29, 2000, in the issue of March 2, 2000, on page 11201, the ninth line should read as follows: ''and (c) agency assessments and recommendations to repair and rebuild''

[FR Doc. C0–5209 Filed 3–7–00; 8:45 am]

BILLING CODE 1505–01–D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term ''Commodity Pool Operator''

Correction

Proposed rule document 00–4747 was inadvertently published in the Rules and Regulations section of the issue of Wednesday, March 1, 2000, beginning on page 10939. It should have appeared in the Proposed Rules section.

[FR Doc. C0–4747 Filed 3–7–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-182-000]

Young Gas Storage Company, Ltd.; Notice of Tariff Filing

Correction

In notice document 00–4455 beginning on page 10070 in the issue of Friday, February 25, 2000, the docket line should appear as set forth above.

[FR Doc. C0–4455 Filed 3–6–00; 8:45 am]

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

Correction

In notice document 00–5348 beginning on page 11579 in the issue of Friday, March 3, 2000, make the following correction:

On page 11579, in the second column after the heading ''AGENCY HOLDING THE MEETING: Federal Maritime Commission.'', insert the following heading: ''TIME AND DATE: 10:00 a.m. - March 8, 2000.''

[FR Doc. C0–5348 Filed 3–6–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Uteroglobin in Treatment of IgA Mediated Autoimmune Disorders

Correction

In notice document 00–4009 beginning on page 8384 in the issue of Friday, February 18, 2000, make the following corrections:

On page 8384, in the third column, seven lines from the bottom, the sentence should end, ''on or before May 18, 2000, will be considered.''

[FR Doc. C0–4009 Filed 3–6–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-180-1430-ET; CACA 41334]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

Correction

In notice document 00–3983, beginning on page 8734, in the issue of Tuesday, February 22, 2000, in the third column, in the legal description under **Mount Diablo Meridian, Calfornia**, in the last line ''P='02'≤'' should be removed.

[FR Doc. C0–3983 Filed 3–6–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0061(2000)]

Cotton Dust Standard: Extension of the Office of Managment of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

Correction

In notice document 00–4867, beginning on page 11087, in the issue of Wednesday, March 1, 2000, make the following corrections:

1. The subject line should appear as set forth above.

2. On page 11088, in the first column, in the 21st line, ''1218–0101'' should read ''1218–0061''.

[FR Doc. C0–4867 Filed 3–7–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities

Correction

In notice document 00–4931 beginning on page 11108 in the issue of Wednesday, March 1, 2000, make the following correction:

On page 11108, in the third column, under the heading **ADDRESSES:**, in the sixth line, ''Attention 1550-0223'' should read '' Attention 1550-0023''.

[FR Doc. C0–4931 Filed 3–6–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
March 8, 2000

Part II

Department of the Treasury

Office of the Comptroller of the Currency
Office of Thrift Supervision

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 3, 208, 225, 325 and 567
Risk-Based Capital Standards; Recourse and Direct Credit Substitutes; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 00–06]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1055]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB31

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 2000–15]

RIN 1550–AB11

Risk-Based Capital Standards; Recourse and Direct Credit Substitutes

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) are proposing changes to their risk-based capital standards to address the regulatory capital treatment of recourse obligations and direct credit substitutes that expose banks, bank holding companies, and thrifts (collectively, banking organizations) to credit risk. The proposal treats recourse obligations and direct credit substitutes more consistently than under the agencies' current risk-based capital standards. In addition, the agencies would use credit ratings and certain alternative approaches to match the risk-based capital requirement more closely to a banking organization's relative risk of loss in asset securitizations. The proposal also requires the sponsor of a revolving credit securitization that involves an early amortization feature to hold capital against the amount of assets under management, *i.e.* the off-balance sheet securitized receivables.

This proposal is intended to result in more consistent treatment of recourse obligations and similar transactions among the agencies, more consistent risk-based capital treatment for certain types of transactions involving similar risk, and capital requirements that more closely reflect a banking organization's relative exposure to credit risk.

DATES: Your comments must be received by June 7, 2000.

ADDRESSES: Comments should be directed to:

OCC: You may send comments electronically to regs.comments@occ.treas.gov or by mail to Docket No. 00–06, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274. You can inspect and photocopy comments at that address.

Board: Comments, which should refer to Docket No. R–1055, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street between Constitution Avenue and C Street, NW, at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number: (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention Docket No. 2000–15. These submissions may be hand-delivered to 1700 G Street, NW, from 9 a.m. to 5 p.m. on business days or may be sent by facsimile transmission to FAX number (202) 906–7755; or by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW, from 9 to 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: *OCC:* Roger Tufts, Senior Economic Advisor or Amrit Sekhon, Risk Specialist, Capital Policy Division, (202) 874–5070; Laura Goldman, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Thomas R. Boemio, Senior Supervisory Financial Analyst, (202) 452–2982, or Norah Barger, Assistant Director (202) 452–2402, Division of Banking Supervision and Regulation. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

FDIC: Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898–8906; or Jamey Basham, Counsel, Legal Division, (202) 898–7265, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Michael D. Solomon, Senior Program Manager for Capital Policy, Supervision Policy, (202) 906–5654; or Karen Osterloh, Assistant Chief Counsel (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The agencies are proposing to amend their risk-based capital standards to change the treatment of certain recourse obligations, direct credit substitutes, and securitized transactions that expose banking organizations to credit risk. This proposal amends the agencies' risk-based capital standards to align more closely the risk-based capital treatment of recourse obligations and direct credit substitutes and to vary the capital requirements for positions in securitized transactions (and certain other credit exposures) according to their relative risk. The proposal also requires the sponsor of a revolving credit securitization that involves an early amortization feature to hold capital

against the amount of assets under management in that securitization.

This proposal builds on the agencies' earlier work with respect to the appropriate risk-based capital treatment for recourse obligations and direct credit substitutes. On May 25, 1994, the agencies published in the **Federal Register** a proposal to reduce the capital requirement for banks for low-level recourse transactions, to treat first-loss (but not second-loss) direct credit substitutes like recourse, and to implement definitions of ''recourse,'' ''direct credit substitute,'' and related terms. 59 FR 27116 (May 25, 1994) (the 1994 Notice). The 1994 Notice also contained, in an advance notice of proposed rulemaking, a proposal to use credit ratings to determine the capital treatment of certain recourse obligations and direct credit substitutes. The OCC, the Board, and the FDIC subsequently implemented the capital reduction for low-level recourse transactions, thereby satisfying the requirements of section 350 of the Riegle Community Development and Regulatory Improvement Act, Public Law 103–325, sec. 350, 108 Stat. 2160, 2242 (1994) (CDRI Act).[1] The OTS risk-based capital regulation already included the low-level recourse treatment required by the statute.[2] The agencies did not issue a final regulation on the remaining elements of the 1994 Notice.

On November 5, 1997, the agencies published another notice of proposed rulemaking. 62 FR 59943 (1997 Proposal). In the 1997 Proposal, the agencies proposed to use credit ratings from nationally recognized statistical rating organizations to determine the capital requirement for recourse obligations, direct credit substitutes, and senior asset-backed securities. Additionally, the 1997 Proposal requested comment on a series of options and alternatives to supplement or replace the ratings-based approach.

In June 1999, the Basel Committee on Banking Supervision issued a consultative paper, ''A New Capital Adequacy Framework, that sets forth possible revisions to the 1988 Basel Accord.[3] The Basel consultative paper discusses potential modifications to the current capital standards, including the capital treatment of securitizations. The suggested changes in the Basel consultative paper move in the same direction as this proposal by looking to external credit ratings issued by qualifying external credit assessment institutions as a basis for determining the credit quality and the resulting capital treatment of securitizations.

II. Background

A. Asset Securitization

Asset securitization is the process by which loans or other credit exposures are pooled and reconstituted into securities, with one or more classes or positions, that may then be sold. Securitization[4] provides an efficient mechanism for banking organizations to buy and sell loan assets or credit exposures and thereby to make them more liquid.

Securitizations typically carve up the risk of credit losses from the underlying assets and distribute it to different parties. The ''first dollar,'' or subordinate, loss position is first to absorb credit losses; the most ''senior'' investor position is last; and there may be one or more loss positions in between (''second dollar'' loss positions). Each loss position functions as a credit enhancement for the more senior loss positions in the structure.

For residential mortgages sold through certain Federally-sponsored mortgage programs, a Federal government agency or Federal government sponsored enterprise (GSE) guarantees the securities sold to investors. However, many of today's asset securitization programs involve nonmortgage assets or are not Federally supported in any way. Sellers of these privately securitized assets therefore often provide other forms of credit enhancement—first and second dollar loss positions—to reduce investors' risk of credit loss.

A seller may provide this credit enhancement itself through recourse arrangements. As defined in this proposal, ''recourse'' refers to the risk of credit loss that a banking organization retains in connection with the transfer of its assets. Banking organizations have long provided recourse in connection with sales of whole loans or loan participations; today, recourse arrangements frequently are associated with asset securitization programs.

A seller may also arrange for a third party to provide credit enhancement[5] in an asset securitization. If the third-party enhancement is provided by another banking organization, that organization assumes some portion of the assets' credit risk. In this proposal, all forms of third-party enhancements, *i.e.*, all arrangements in which a banking organization assumes risk of credit loss from third-party assets or other claims that it has not transferred, are referred to as ''direct credit substitutes.'' The economic substance of a banking organization's risk of credit loss from providing a direct credit substitute can be identical to its risk of credit loss from transferring an asset with recourse.

Depending on the type of securitization transaction, the sponsor of a securitization may provide a portion of the total credit enhancement internally, as part of the securitization structure, through the use of spread accounts, overcollateralization, retained subordinated interests, or other similar forms of on-balance sheet assets. When these or other types of internal enhancements are provided, the enhancements are considered a form of recourse for risk-based capital purposes. Many asset securitizations use a combination of internal enhancement, recourse, and third-party enhancement to protect investors from risk of credit loss.

B. Risk Management of Exposures Arising From Securitization Activities

While asset securitization can enhance both credit availability and a banking organization's profitability, managing the risks associated with this activity can pose significant challenges. This is because the risks involved, while not new to banking organizations, may be less obvious and more complex than the risks of traditional lending. Specifically, securitization can involve credit, liquidity, operational, legal, and reputational risks in concentrations and forms that may not be fully recognized by management or adequately incorporated into a banking organization's risk management systems.

The risk-based capital treatment described in this proposal provides one important way of addressing the credit risk presented by securitization activities, but a banking organization's compliance with capital standards should be complemented by effective risk management strategies. The agencies expect that banking organizations will identify, measure, monitor and control the risks of their securitization activities (including

[1] *See* 60 FR 17986 (April 10, 1995) (OCC); 60 FR 8177 (February 13, 1995) (Board); 60 FR 15858 (March 28, 1995) (FDIC).

[2] *See* 60 FR 45618 (August 31, 1995.)

[3] International Convergence of Capital Measurement and Capital Standards (July 1988).

[4] For purposes of this discussion, references to ''securitization'' also include structured finance transactions or programs that generally create stratified credit risk positions, which may or may not be in the form of a security, whose performance is dependent upon a pool of loans or other credit exposures.

[5] As used in this proposal, the terms ''credit enhancement'' and ''enhancement'' refer to both recourse arrangements and direct credit substitutes.

synthetic securitizations [6] using credit derivatives) and explicitly incorporate the full range of risks into their risk management systems. Management is responsible for having adequate policies and procedures in place to ensure that the economic substance of their risks is fully recognized and appropriately managed. Banking organizations should be able to measure and manage their risk exposure from risk positions in the securitizations, either retained or acquired, and should be able to assess the credit quality of the retained residual portfolio after the transfer of assets in a securitization transaction. The formality and sophistication with which the risks of these activities are incorporated into a banking organization's risk management system should be commensurate with the nature and volume of its securitization activities. Banking organizations with significant securitization activities, no matter what the size of their on-balance sheet assets, are expected to have more elaborate and formal approaches to manage the risks. Failure to understand the risks inherent in securitization activities and to incorporate them into risk management systems and internal capital allocations may constitute an unsafe or unsound banking practice.

Banking organizations must have adequate systems that evaluate the effect of securitization transactions on the banking organization's risk profile and capital adequacy. Based on the complexity of transactions, these systems should be capable of differentiating between the nature and quality of the risk exposures transferred versus those that the banking organization retains. Adequate management systems usually:

- Have an internal system for grading credit risk exposures, including: (1) Adequate differentiation of risk among risk grades; (2) adequate controls to ensure the objectivity and consistency of the rating process; and (3) analysis or evidence supporting the accuracy or appropriateness of the risk-grading system.[7]
- Evaluate the effect of the transaction on the nature and distribution of the banking book exposures that have not been transferred in connection with securitization. This analysis should include a comparison of the banking book's risk profile before and after the transaction, including the mix of exposures by risk grade and by business or economic sector. The analysis should also include identification of any concentrations of credit risk.
- Perform rigorous, forward-looking stress testing [8] on exposures that have not been transferred (that is, loans and commitments remaining in the banking book), transferred exposures, and exposures retained to facilitate transfers (that is, credit enhancements).
- Have an internal economic capital allocation methodology that provides the banking organization will have adequate capitalization to meet a specific probability that it will not become insolvent if unexpected credit losses occur and that readjusts, as necessary, the sponsoring bank's internal economic capital requirements to take into account the effect of the securitization transactions.

Banking organizations should ensure that their capital positions are sufficiently strong to support all of the risks associated with these activities on a fully consolidated basis and should maintain adequate capital in all affiliated entities engaged in these activities.

C. Current Risk-Based Capital Treatment of Recourse and Direct Credit Substitutes

Currently, the agencies' risk-based capital standards apply different treatments to recourse arrangements and direct credit substitutes. As a result, capital requirements applicable to credit enhancements do not consistently reflect credit risk. The current rules of the OCC, Board, and FDIC (the banking agencies) are also not entirely consistent with those of the OTS.

1. Recourse

The agencies' risk-based capital guidelines prescribe a single treatment for assets transferred with recourse, regardless of whether the transaction is reported as a financing or a sale of assets in a bank's Consolidated Reports of Condition and Income (Call Report), a bank holding company's FR Y–9 reports, or a thrift's Thrift Financial Report.[9] For a transaction reported as a financing, the transferred assets remain on the balance sheet and are risk-weighted. For a transaction reported as a sale, the entire outstanding amount of the assets sold (not just the contractual amount of the recourse obligation) is converted into an on-balance sheet credit equivalent amount using a 100% credit conversion factor. This credit equivalent amount (less any applicable recourse liability account recorded on the balance sheet) is then risk-weighted.[10] If the seller's balance sheet includes as an asset any retained interest in the assets sold, the retained interest is not risk-weighted separately. Thus, regardless of the method used to account for the transfer, risk-based capital is held against the full, risk-weighted amount of the transferred assets, although the transaction is subject to the low-level recourse rule, which limits the maximum risk-based capital requirement to the banking organization's maximum contractual exposure. [11]

For leverage capital ratio purposes, if a transfer with recourse is reported as a financing, the transferred assets remain on the transferring banking organization's balance sheet and the banking organization must hold leverage capital against these assets. If a transfer with recourse is reported as a sale, the assets sold do not remain on the selling

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[6] ''Synthetic securitization'' refers to the bundling of credit risk associated with on-balance sheet assets and off-balance sheet items for subsequent sale into the market.

[7] In this regard, the agencies note that one increasingly important component of the systems for controlling credit risk at larger banking organizations is the identification of the gradations in credit risk among their business loans and the assignment of internal credit risk ratings to loans that correspond to these gradations. The agencies believe that the use of such an internal rating process is appropriate—indeed, necessary—for sound risk management at large banking organizations. In particular, those banking organizations with significant involvement in securitization activities should have relatively elaborate and formal approaches for assessing and managing the associated credit risk.

[8] Stress testing usually involves identifying possible events or changes in market behavior that could have unfavorable effects on an banking organization and assessing the organization's ability to withstand them. Stress testing should not only consider the probability of adverse events, but also potential ''worst case'' scenarios. Such an analysis should be done on a consolidated basis and consider, for example, the effect of higher than expected levels of delinquencies and defaults. The analysis should also consider the consequences of early amortization events that could raise concerns regarding a banking organization's capital adequacy and its liquidity and funding capabilities. Stress test analyses should also include contingency plans regarding the actions management might take given certain situations.

[9] Assets transferred with any amount of recourse in a transaction reported as a financing in accordance with generally accepted accounting principles (GAAP) remain on the balance sheet and are risk-weighted in the same manner as any other on-balance sheet asset. Assets transferred with recourse in a transaction that is reported as a sale under GAAP are removed from the balance sheet and are treated as off-balance sheet exposures for risk-based capital purposes.

[10] Consistent with statutory requirements, the agencies' current rules also provide for special treatment of sales of small business loan obligations with recourse. *See* 12 CFR Part 3, appendix A, Section 3(c) (OCC); 12 CFR parts 208 and 225, appendix A, II.B.5 (FRB); 12 CFR part 325, appendix A, II.B.6 (FDIC); 12 CFR 567.6(E)(3) (OTS).

[11] Section 350 of the CDRI Act required the agencies to prescribe regulations providing that the risk-based capital requirement for assets transferred with recourse could not exceed a banking organization's maximum contractual exposure. The agencies may require a higher amount if necessary for safety and soundness reasons. *See* 12 U.S.C. 4808.

banking organization's balance sheet and the banking organization need not hold leverage capital against these assets. However, if the seller's balance sheet includes as an asset any retained interest in the assets sold, leverage capital must be held against the retained interest.

2. Direct Credit Substitutes

Direct credit substitutes are treated differently from recourse under the current risk-based capital standards. Under the banking agencies' current standards, off-balance sheet direct credit substitutes, such as financial standby letters of credit provided for third-party assets, carry a 100% credit conversion factor. However, only the dollar amount of the direct credit substitute is converted into an on-balance sheet credit equivalent amount, so that capital is held only against the face amount of the direct credit substitute. The capital requirement for a recourse arrangement, in contrast, generally is based on the full amount of the assets enhanced.

If a direct credit substitute covers less than 100% of the potential losses on the assets enhanced, the current capital treatment results in a lower capital charge for a direct credit substitute than for a comparable recourse arrangement. For example, if a direct credit substitute covers losses up to the first 20% of the assets enhanced, then the on-balance sheet credit equivalent amount equals that 20% amount, and risk-based capital is held against only the 20% amount. In contrast, required capital for a first-loss 20% recourse arrangement is higher because capital is held against the full outstanding amount of the assets enhanced, subject to the low-level recourse rule.

Currently, under the banking agencies' guidelines, purchased subordinated interests receive the same capital treatment as off-balance sheet direct credit substitutes. That is, the amount of the purchased subordinated interest is placed in the appropriate risk-weight category. In contrast, a banking organization that *retains* a subordinated interest in connection with the transfer of its own assets is considered to have transferred the assets with recourse. As a result, the banking organization must hold capital against the carrying amount of the retained subordinated interest as well as the outstanding amount of all senior interests that it supports, subject to the low-level recourse rule.

The OTS risk-based capital regulation treats some forms of direct credit substitutes (*e.g.,* financial standby letters of credit) in the same manner as the banking agencies' guidelines. However, unlike the banking agencies, the OTS treats purchased subordinated interests (except for certain high quality subordinated mortgage-related securities) under its general recourse provisions. The risk-based capital requirement is based on the carrying amount of the subordinated interest plus all senior interests, as though the thrift owned the full outstanding amount of the assets enhanced.

3. Concerns Raised by Current Risk-Based Capital Treatment

The agencies' current risk-based capital standards raise significant concerns with respect to the treatment of recourse and direct credit substitutes. First, banking organizations are often required to hold different amounts of capital for recourse arrangements and direct credit substitutes that expose the banking organization to equivalent risk of credit loss. Banking organizations are taking advantage of this anomaly, for example, by providing first-loss letters of credit to asset-backed commercial paper conduits that lend directly to corporate customers. This results in a significantly lower capital requirement than if the loans had originally been carried on the banking organizations' balance sheets and then were sold. Moreover, the current capital standards do not recognize differences in risk associated with different loss positions in asset securitizations, nor do they provide uniform definitions of recourse, direct credit substitute, and associated terms.

III. Description of the Proposal

This proposal would amend the agencies' risk-based capital standards as follows:

- The proposal defines ''recourse'' and revises the definition of ''direct credit substitute''; [12]
- It provides more consistent risk-based capital treatment for recourse obligations and direct credit substitutes;
- It varies the capital requirements for positions in securitized transactions according to their relative risk exposure, using credit ratings from nationally recognized statistical rating organizations [13] (rating agencies) to measure the level of risk;
- It permits the limited use of a banking organization's qualifying internal risk rating system, a rating agency's or other appropriate third party's review of the credit risk of positions in structured programs, and qualifying software to determine the capital requirement for certain unrated direct credit substitutes; and
- It requires the sponsor of a revolving credit securitization that involves an early amortization feature to hold capital against the amount of assets under management in that securitization.

The use of credit ratings in this proposal is similar to the 1997 Proposal. Although many commenters expressed concerns about specific details in the 1997 Proposal, commenters generally supported the goal of making the capital requirements associated with asset securitizations more rational and efficient, and viewed the 1997 Proposal as a positive step toward achieving a more consistent, rational, and efficient regulatory capital framework. The agencies have made several changes to the 1997 Proposal in response to commenters' concerns and based on further agency consideration of the issues presented.

Several options and alternatives in the 1997 Proposal have been eliminated: the modified gross-up approach, the ratings benchmark approach, and the historical losses approach.[14] Commenters expressed numerous concerns about these approaches and the agencies agree that better alternatives exist.

Commenters responding to the 1997 Proposal expressed a number of concerns about the use of ratings from rating agencies to determine capital requirements, especially in the case of unrated direct credit substitutes. Commenters noted that banking organizations actively involved in the securitization business have their own internal risk rating systems, that banking organizations know their assets better than third parties, and that a requirement that a banking organization obtain a rating from a rating agency solely for regulatory capital purposes is burdensome. Some commenters also expressed skepticism about the suitability of rating agency credit ratings for regulatory capital purposes.

In the opinion of the agencies, ratings have the advantages of being relatively objective, widely used, and relied upon by investors and other participants in

[12] The OTS, which already defines the term ''recourse'' in its rules, would revise its definition so that it is consistent with the definition adopted by the other agencies. The OTS is also adding a definition of ''financial guarantee-type letter of credit'' to be consistent with the OCC and the Board.

[13] ''Nationally recognized statistical rating organization'' means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for various purposes, including the capital rules for broker-dealers. *See* SEC Rule 15c3–1(c)(2)(vi)(E), (F) and (H), 17 CFR 240.15c3–091(c)(2)(vi)(E), (F), and (H).

[14] For a description of these approaches, *see* 62 FR 59944, 59952–59961 (November 5, 1997).

the financial markets. Ratings provide a flexible, efficient, market-oriented way to measure credit risk. The agencies recognize, however, that there are drawbacks to using credit ratings from rating agencies to set capital requirements. Moreover, the agencies agree with some commenters' observation that credit ratings are most useful with respect to publicly-traded positions that would be rated regardless of the agencies' risk-based capital requirements.

To minimize the need for banking organizations to obtain ratings on otherwise unrated enhancements that are provided in asset-backed commercial paper securitizations, the proposal permits banking organizations to use their own qualifying internal risk rating systems in place of ratings from rating agencies for risk weighting certain direct credit substitutes. The use of internal risk ratings to assign direct credit substitutes in asset-backed commercial paper programs to rating categories under the ratings-based approach is dependent upon the existence of adequate internal risk rating systems. The adequacy of any internal risk rating system will depend upon a banking organization's incorporation of the prudential standards outlined in this proposal, as well as other factors recommended through supervisory guidance or on a case-by-case basis.

Finally, the agencies are proposing an additional measure to address the risk associated with early amortization features in certain asset securitizations. The managed assets approach, described in Section III.D., would apply a 20% risk weight to the amount of off-balance sheet securitized assets under management in such transactions.

A. Definitions and Scope of the Proposal

1. Recourse

The proposal defines the term ''recourse'' to mean an arrangement in which a banking organization *retains* risk of credit loss in connection with an asset transfer, if the risk of credit loss exceeds a *pro rata* share of the banking organization's claim on the assets. The proposed definition of recourse is consistent with the banking agencies' longstanding use of this term, and incorporates existing agency practices regarding retention of risk in asset transfers into the risk-based capital standards.[15]

Currently, the term ''recourse'' is not defined explicitly in the banking agencies' risk-based capital guidelines. Instead, the guidelines use the term ''sale of assets with recourse,'' which is defined by reference to the Call Report Instructions. *See* Call Report Instructions, Glossary (entry for ''Sales of Assets for Risk-Based Capital Purposes''). Once a definition of recourse is adopted in the risk-based capital guidelines, the banking agencies would remove the cross-reference to the Call Report instructions from the guidelines. The OTS capital regulation currently provides a definition of the term ''recourse,'' which would also be replaced once a final definition of recourse is adopted.

2. Direct Credit Substitute

The proposed definition of ''direct credit substitute'' complements the definition of recourse. The term ''direct credit substitute'' would refer to any arrangement in which a banking organization assumes risk of credit-related losses from assets or other claims it has not transferred, if the risk of credit loss exceeds the banking organization's *pro rata* share of the assets or other claims. Currently, under the banking agencies' guidelines, this term covers guarantee-type arrangements. As revised, it would also include explicitly items such as purchased subordinated interests, agreements to cover credit losses that arise from purchased loan servicing rights, credit derivatives and lines of credit that provide credit enhancement.

Some commenters responding to the 1997 Proposal suggested that the definition of ''direct credit substitute'' should exclude risk positions that are not part of an asset securitization. Although direct credit substitutes commonly are used in asset securitizations, enhancements involving similar credit risk exposure can arise in other contexts and should receive the same capital treatment as enhancements associated with securitizations.

Several commenters objected to the 1997 Proposal's treatment of direct credit substitutes as recourse. Commenters asserted that the business of providing third-party credit enhancements has historically been safe and profitable for banks and objected that the proposed capital treatment would impair the competitive position of U.S. banks and thrifts. As has been previously described, however, the current treatment of direct credit substitutes is not consistent with the treatment of recourse obligations. The agencies have concluded that the difference in treatment between the two forms of credit enhancement invites banking organizations to obtain direct credit substitutes in place of recourse obligations in order to avoid the capital requirement applicable to recourse obligations and on-balance-sheet assets. For this reason, the agencies are again proposing, as a general rule, to extend the current risk-based capital treatment of asset transfers with recourse, including the low-level recourse rule, to direct credit substitutes.

In an effort to address competitive inequities at the international level, however, the agencies have raised this issue with the bank supervisory authorities from the other countries represented on the Basel Committee on Banking Supervision. The Basel Committee's consultative paper, ''A New Capital Adequacy Framework,'' acknowledges that the current Basel Capital Accord, upon which the agencies' risk-based capital standards are based, lacks consistency in its treatment of credit enhancements.

3. Lines of Credit

One commenter requested clarification that a line of credit that provides credit enhancement for the financial obligations of an account party could be a direct credit substitute only if it represented an irrevocable obligation to the beneficiary. A revocable line of credit would not be a direct credit substitute because the issuer could protect itself against credit losses at any time prior to a draw on the line of credit. However, an irrevocable line of credit could expose the issuer to credit losses and would constitute a direct credit substitute, if it met the criteria in the definitions. Also, any conditions attached to the issuer's ability to revoke the undrawn portion of a line of credit, or that interfere with the issuer's ability to protect itself against credit loss prior to a draw, will cause the line of credit to constitute a direct credit substitute.

4. Credit Derivatives

The proposed definitions of ''recourse'' and ''direct credit substitute'' cover credit derivatives to the extent that a banking organization's credit risk exposure exceeds its *pro rata* interest in the underlying obligation. The ratings-based approach therefore applies to rated instruments such as credit-linked notes issued as part of a

[15] The OTS currently defines the term ''recourse'' more broadly than the proposal to include arrangements involving credit risk that a thrift assumes or accepts from third-party assets as well as risk that it retains in an asset transfer. Under the proposal, credit risk that a banking organization assumes from third-party assets falls under the definition of ''direct credit substitute'' rather than ''recourse.''

synthetic securitization.[16] The agencies request comment on the inclusion of credit derivatives in the definitions of ''recourse'' and ''direct credit substitute,'' as well as on the definition of ''credit derivative'' contained in the proposal.

5. Risks Other Than Credit Risks

A capital charge would be assessed only against arrangements that create exposure to credit or credit-related risks. This continues the agencies' current practice and is consistent with the risk-based capital standards' traditional focus on credit risk. The agencies have undertaken other initiatives to ensure that the risk-based capital standards take interest rate risk and other non-credit related market risks into account.

6. Implicit Recourse

The definitions cover all arrangements that are recourse or direct credit substitutes in form or in substance. Recourse may also exist when a banking organization assumes risk of loss without an explicit contractual agreement or, if there is a contractual limit, when the banking organization assumes risk of loss in an amount exceeding the limit. The existence of implicit recourse is often a complex and fact-specific issue, usually demonstrated by a banking organization's actions to support a securitization beyond any contractual obligation. Actions that may constitute implicit recourse include: providing voluntary support for a securitization by selling assets to a trust at a discount from book value; exchanging performing for non-performing assets; or other actions that result in a significant transfer of value in response to deterioration in the credit quality of a securitized asset pool.

To date, the agencies have taken the position that when a banking organization provides implicit recourse, it generally should hold capital in the same amount as for assets sold with recourse. However, the complexity of many implicit recourse arrangements and the variety of circumstances under which implicit recourse may be provided raise issues about whether recourse treatment is always the most appropriate way to address the level of risk that a banking organization has effectively retained or whether a different capital requirement would be warranted in some circumstances. Accordingly, the 1997 Proposal requested comment on the types of actions that should be considered implicit recourse and how the agencies should treat those actions for regulatory capital purposes.

Commenters responding to the 1997 Proposal generally supported the view that implicit recourse is best handled on a case-by-case basis, guided by the general rule that actions that demonstrate retention of risk will trigger recourse treatment of affected transactions. The agencies intend to continue to address implicit recourse case-by-case, but may issue additional guidance if needed to clarify further the circumstances in which a banking organization will be considered to have provided implicit recourse.

7. Subordinated Interests in Loans or Pools of Loans

The definitions of recourse and direct credit substitute explicitly cover a banking organization's ownership of subordinated interests in loans or pools of loans. This continues the banking agencies' longstanding treatment of retained subordinated interests as recourse and recognizes that *purchased* subordinated interests can also function as credit enhancements. (The OTS currently treats both retained and *purchased* subordinated securities as recourse obligations.) Subordinated interests generally absorb more than their *pro rata* share of losses (principal and interest) from the underlying assets in the event of default. For example, a multi-class asset securitization may have several classes of subordinated securities, each of which provides credit enhancement for the more senior classes. Generally, the holder of any class that absorbs more than its *pro rata* share of losses from the total underlying assets is providing credit protection for all of the more senior classes.[17]

Some commenters questioned the treatment of purchased subordinated interests as recourse. Subordinated interests expose holders to comparable risk regardless of whether the interests are retained or purchased. If purchased subordinated interests were not treated as recourse, banking organizations could avoid recourse treatment by swapping retained subordinated interests with other banking organizations or by purchasing subordinated interests in assets originated by a conduit. The proposal would mitigate the effect of treating purchased subordinated interests as recourse by reducing the capital requirement on interests that qualify under the multi-level approach described in section III.B.

8. Representations and Warranties

When a banking organization transfers assets, including servicing rights, it customarily makes representations and warranties concerning those assets. When a banking organization purchases loan servicing rights, it may also assume representations and warranties made by the seller or a prior servicer. These representations and warranties give certain rights to other parties and impose obligations upon the seller or servicer of the assets. The proposal addresses those particular representations and warranties that function as credit enhancements, *i.e.* those where, typically, a banking organization agrees to protect purchasers or some other party from losses due to the default or non-performance of the obligor or insufficiency in the value of collateral. Therefore, to the extent a banking organization's representations and warranties function as credit enhancements to protect asset purchasers or investors from credit risk by obligating the banking organization to protect another party from losses due to credit risk in the transferred assets, the proposal treats them as recourse or direct credit substitutes.

The 1997 Proposal treated as recourse or a direct credit substitute any representation or warranty other than a standard representation or warranty. Standard representations and warranties were those referring to facts verified by the seller or servicer with reasonable due diligence or conditions within the control of the seller or servicer and those providing for the return of assets in the event of fraud or documentation deficiencies. Some commenters objected that the 1997 Proposal would treat as recourse many industry-standard warranties that impose only minor operational risk instead of true credit risk. Other commenters objected that the due diligence requirement was burdensome, and that it would impose compliance costs on banking organizations disproportionate to the risk assumed.

The current proposal focuses on whether a warranty allocates credit risk to the banking organization, rather than whether the warranty is somehow standard or customary within the industry. Several commenters suggested

[16] ''Synthetic securitization'' refers to the bundling of credit risk associated with on-balance sheet assets and off-balance sheet items for subsequent sale into the market. Credit derivatives, and in particular credit-linked notes, are used to structure a synthetic securitization. For more information on synthetic securitizations *see,* Joint OCC and Federal Reserve Board Issuance on Credit Derivatives, ''Capital Interpretations—Synthetic Collateralized Loan Obligations,'' dated November 15, 1999.

[17] Current OTS risk-based capital guidelines exclude certain high-quality subordinated mortgage-related securities from treatment as recourse arrangements due to their credit quality.

that the agencies expressly take accepted mortgage banking industry practice into account in determining whether a warranty should receive recourse treatment. However, the agencies are aware of warranties sometimes characterized as ''standard'' that effectively function as credit enhancements. These include warranties that transferred loans will remain of investment quality, or that no circumstances exist involving the loan collateral or borrower's credit standing that could cause the loan to become delinquent. They may also include warranties that, for seasoned mortgages, the value of the loan collateral still equals the original appraised value and the borrower's ability to pay has not changed adversely.

The proposal is consistent with the agencies' longstanding recourse treatment of representations and warranties that effectively guaranty performance or credit quality of transferred loans. However, the proposal and the agencies' longstanding practice also recognize that banking organizations typically make a number of factual warranties unrelated to ongoing performance or credit quality. These warranties entail operational risk, as opposed to the open-ended credit risk inherent in a financial guaranty. Warranties that create operational risk include: warranties that assets have been underwritten or collateral appraised in conformity with identified standards, and warranties that provide for the return of assets in instances of incomplete documentation or fraud.

Warranties can impose varying degrees of operational risk. For example, a warranty that asset collateral has not suffered damage from hazard entails risk that is offset to some extent by prudent underwriting practices requiring the borrower to provide hazard insurance to the banking organization. A warranty that asset collateral is free of environmental hazards may present acceptable operational risk for certain types of properties that have been subject to environmental assessment, depending on the circumstances. The agencies address appropriate limits for these operational risks through supervision of a banking organization's loan underwriting, sale, and servicing practices. Also, a banking organization that provides warranties to loan purchasers and investors must include associated operational risks in its risk management of exposures arising from loan sale or securitization-related activities. Banking organizations should be prepared to demonstrate to examiners that the operational risks are effectively managed.

The proposal continues the agencies' current practice of imposing recourse treatment on ''early-default'' clauses. Early-default clauses typically warrant that transferred loans will not become more than 30 days delinquent within a stated period, such as four months. Once the stated period has run, the early-default clause will no longer trigger recourse treatment, provided that there is no other provision that constitutes recourse. One commenter to the 1997 Proposal stated that early-default clauses carry minimal risk, and are intended to deal with inadvertent transfers of loans that are already 30-day delinquencies, or to guard against unsound originations by the loan seller. Another commenter found recourse treatment of early-default clauses to be an appropriate response to the transfer of credit risk that takes place under these clauses.

The agencies find that early-default clauses are often drafted so broadly that they are indistinguishable from a guaranty of financial assets. The agencies have even found recent examples in which early-default clauses have been expanded to cover the first year after loan transfer. Industry concerns about assets delinquent at the time of transfer or unsound originations could be dealt with by warranties directly addressing the condition of the asset at the time of transfer and compliance with stated underwriting standards or, failing that, exposure caps permitting the banking organization to take advantage of the low-level recourse rule. The proposal also requires recourse treatment for warranties providing assurances about the actual value of asset collateral, including that the market value corresponds to its appraised value or that the appraised value will be realized in the event of foreclosure and sale.

The agencies invite further comment on these issues. The agencies also invite comment on whether ''premium refund'' clauses should receive recourse treatment under any final rule. These clauses require the seller to refund the premium paid by the investor for any loan that prepays within a stated period after the loan is transferred. The agencies are aware of premium refund clauses with terms ranging from 90 days to 36 months.

9. Loan Servicing Arrangements

The proposed definitions of ''recourse'' and ''direct credit substitute'' cover loan servicing arrangements if the servicer is responsible for credit losses associated with the loans being serviced. However, cash advances made by residential mortgage servicers to ensure an uninterrupted flow of payments to investors or the timely collection of the mortgage loans are specifically excluded from the definitions of recourse and direct credit substitute, provided that the residential mortgage servicer is entitled to reimbursement for any significant advances.[18] This type of advance is assessed risk-based capital only against the amount of the cash advance, and is assigned to the risk-weight category appropriate to the party obligated to reimburse the servicer.

If a residential mortgage servicer is not entitled to full reimbursement, then the maximum possible amount of any nonreimbursed advances on any one loan must be contractually limited to an insignificant amount of the outstanding principal on that loan in order for the servicer's obligation to make cash advances to be excluded from the definitions of recourse and direct credit substitute. This treatment reflects the agencies' traditional view that servicer cash advances meeting these criteria are part of the normal mortgage servicing function and do not constitute credit enhancements.

Commenters responding to the 1997 Proposal generally supported the proposed definition of servicer cash advances. Some commenters asked for clarification of the term ''insignificant'' and whether ''reimbursement'' includes reimbursement payable out of subsequent collections or reimbursement in the form of a general claim on the party obligated to reimburse the servicer. Nonreimbursed advances on any one loan that are generally contractually limited to no more than one percent of the amount of the outstanding principal on that loan would be considered insignificant. Reimbursement includes reimbursement payable from subsequent collections and reimbursement in the form of a general claim on the party obligated to reimburse the servicer, provided that the claim is not subordinated to other claims on the cash flows from the underlying asset pool.

Some commenters responding to the 1997 Proposal suggested that the agencies treat servicer cash advances as any advances that the servicer reasonably expects will be repaid. The agencies believe that a clear, specific standard is needed to prevent the use of servicer cash advances to circumvent the proposed risk-based capital

[18] Servicer cash advances include disbursements made to cover foreclosure costs or other expenses arising from a loan in order to facilitate its timely collection (but not to protect investors from incurring these expenses).

treatment of recourse obligations and direct credit substitutes.

10. Spread Accounts and Overcollateralization

Several commenters requested that the agencies state in their rules that spread accounts and overcollateralization do not impose a risk of loss on a banking organization and are, therefore, not recourse. By its terms, the definition of recourse covers only the retention of risk in a sale of assets. Overcollateralization does not ordinarily impose a risk of loss on a banking organization, so it normally would not fall within the proposed definition of recourse. However, a retained interest in a spread account that is reflected as an asset on a selling banking organization's balance sheet (directly as an asset or indirectly as a receivable) is a form of recourse and is treated accordingly for risk-based capital purposes.

11. Interaction With Market Risk Rule

Some commenters responding to the 1997 Proposal asked for clarification of the treatment of a transaction covered by both the market risk rule and the recourse rule. Under the market risk rule,[19] a position properly located in the trading account is excluded from risk-weighted assets. The banking agencies are not proposing to modify this treatment, so a position that is properly held in the trading account would not be included in risk-weighted assets, even if the position otherwise met the criteria for a recourse obligation or a direct credit substitute.

12. Participations in Direct Credit Substitutes

If a direct credit substitute is originated by a banking organization which then sells a participation in that direct credit substitute to another entity, the originating banking organization must apply a 100% conversion factor to the full amount of the assets supported by the direct credit substitute. The originating banking organization would then risk weight the credit equivalent amount of the participant's *pro rata* share of the direct credit substitute at the lower of the risk category appropriate to the obligor in the underlying transaction, after considering any relevant guaranties or collateral, or the risk category appropriate to the participant entity. The remaining *pro rata* share of the credit equivalent amount is assigned to the risk-weight category appropriate to the obligor in the underlying transaction, guarantor or collateral.

A banking organization that acquires a risk participation in a direct credit substitute must apply a 100% conversion factor to its percentage share of the direct credit substitute multiplied by the full amount of the assets supported by the credit enhancement. The credit equivalent amount is then assigned to the risk category appropriate to the obligor or, if relevant, the nature of the collateral or guaranty.

Finally, in the case of the syndication of a direct credit substitute where each banking organization is obligated only for its *pro rata* share of the risk and there is no recourse to the originating banking organization, each banking organization must hold risk-based capital against its *pro rata* share of the assets supported by the direct credit substitute.

13. Reservation of Authority

The agencies are proposing to add language to the risk-based capital standards that will provide greater flexibility in administering the standards. Banking organizations are developing novel transactions that do not fit well into the risk-weight categories and credit conversion factors set forth in the standards. Banking organizations also are devising novel instruments that nominally fit into a particular risk-weight category or credit conversion factor, but that impose risks on the banking organization at levels that are not commensurate with the nominal risk-weight or credit conversion factor for the asset, exposure or instrument. Accordingly, the agencies are proposing to add language to the standards to clarify their authority, on a case-by-case basis, to determine the appropriate risk-weight for assets and credit equivalent amounts and the appropriate credit conversion factor for off-balance sheet items in these circumstances. Exercise of this authority by the agencies may result in a higher or lower risk weight for an asset or credit equivalent amount or a higher or lower credit conversion factor for an off-balance sheet item. This reservation of authority explicitly recognizes the agencies retention of sufficient discretion to ensure that banking organizations, as they develop novel financial assets, will be treated appropriately under the risk-based capital standards.[20] In addition, the agencies reserve the right to assign risk positions in securitizations to appropriate risk categories if the credit rating of the risk position is deemed to be inappropriate.

14. Privately-Issued Mortgage-Backed Securities

Currently, the agencies assign privately-issued mortgage-backed securities to the 20% risk-weight category if the underlying pool is composed entirely of mortgage-related securities issued by the Federal National Mortgage Association (Fannie Mae), Federal Loan Mortgage Corporation (Freddie Mac), or Government National Mortgage Association (Ginnie Mae). Privately-issued mortgage-backed securities backed by whole residential mortgages are now assigned to the 50% risk-weight category. The agencies propose to eliminate this ''pass-through'' treatment in favor of a ratings based approach. Because most mortgage-backed securities usually also receive the highest or second highest credit rating, the agencies believe that ''pass-through'' treatment will be redundant once the ratings-based approach is implemented and, therefore, propose to eliminate it.

B. Proposed Treatment for Rated Positions

As described in section II.A., each loss position in an asset securitization structure functions as a credit enhancement for the more senior loss positions in the structure. Currently, the risk-based capital standards do not vary the rate of capital requirement for different credit enhancements or loss positions to reflect differences in the relative risk of credit loss represented by the positions.

To address this issue, the agencies are proposing a multi-level, ratings-based approach to assess capital requirements on recourse obligations, direct credit substitutes, and senior and subordinated securities in asset securitizations based on their relative exposure to credit risk. The approach uses credit ratings from the rating agencies and, to a limited extent, banking organization's internal risk ratings and other alternatives, to measure relative exposure to credit risk and to determine the associated risk-based capital requirement. The use of credit ratings provides a way for the agencies to use determinations of credit quality relied upon by investors and other market participants to differentiate the regulatory capital treatment for loss

[19] The OTS does not have a market risk rule.

[20] The Board is also proposing to add language to its risk-based capital standards that would permit the Board to adjust the treatment of a capital instrument that does not fit into the existing capital categories or that provides capital to a banking organization at levels that are not commensurate with the nominal capital treatment of the instrument. The other agencies already have this flexibility under their existing rules.

positions representing different gradations of risk. This use permits the agencies to give more equitable treatment to a wide variety of transactions and structures in administering the risk-based capital system.

The fact that investors rely on these ratings to make investment decisions exerts market discipline on the rating agencies and gives their ratings market credibility. The market's reliance on ratings, in turn, gives the agencies confidence that it is appropriate to consider ratings as a major factor in the risk weighting of assets for regulatory capital purposes. The agencies, however, would retain their authority to override the use of certain ratings or the ratings on certain instruments, either on a case-by-case basis or through broader supervisory policy, if necessary or appropriate to address the risk to banking organizations.

Under the ratings-based approach, the capital requirement for a recourse obligation, direct credit substitute, or traded asset-backed security would be determined as follows: [21]

Rating category	Examples	Risk weight
Highest or second highest investment grade	AAA or AA	20%.
Third highest investment grade	A	50%.
Lowest investment grade	BBB	100%.
One category below investment grade	BB	200%.
More than one category below investment grade, or unrated	B or unrated	''Gross-up'' treatment.

Many commenters expressed concerns about the so-called ''cliff effect'' that would arise because of the small number of rating categories—three—contained in the 1997 Proposal. To reduce the cliff effect, which causes relatively small differences in risk to result in disproportionately large differences in the capital requirement for a risk position, the agencies are proposing to add two additional rating categories, for a total of five.

Under the proposal, the ratings-based approach is available for traded asset-backed securities [22] and for traded and non-traded recourse obligations and direct credit substitutes. A position is considered ''traded'' if, at the time it is rated by an external rating agency, there is a reasonable expectation that in the near future: (1) The position may be sold to investors relying on the rating; or (2) a third party may enter into a transaction (*e.g.,* a loan or repurchase agreement) involving the position in which the third party relies on the rating of the position. If external rating agencies rate a traded position differently, the single highest rating applies.

An unrated position that is senior (in all respects, including access to collateral) to a rated position that is traded is treated as if it had the rating given the rated position, subject to the banking organization satisfying its supervisory agency that such treatment is appropriate.

Recourse obligations and direct credit substitutes not qualifying for a reduced capital charge and positions rated more than one category below investment grade receive ''gross-up'' treatment, that is, the banking organization holding the position would hold capital against the amount of the position plus all more senior positions, subject to the low-level recourse rule.[23] This grossed-up amount is placed into risk-weight categories according to the obligor and collateral.

The ratings-based approach is based on current ratings, so that a rating downgrade or withdrawal of a rating could change the treatment of a position under the proposal. However, a downgrade of a position by a single rating agency would not affect the capital treatment of a position if the position still qualified for the previous capital treatment under one or more ratings from a different rating agency.

C. Proposed Treatment for Non-Traded and Unrated Positions

1. Ratings on Non-Traded Positions

In the 1994 Notice, the agencies proposed to permit a banking organization to obtain a rating for a non-traded recourse obligation or direct credit substitute in order to permit that position to qualify for a favorable risk-weight. In response to the 1994 Notice, one rating agency expressed concern that use of ratings by the agencies for regulatory purposes could undermine the integrity of the rating process. Ordinarily, according to the commenter, there is a tension between the interests of the investors who rely on ratings and the interests of the issuers who pay rating agencies to generate ratings. Under the ratings-based approach in the 1994 Notice, however, the holder of a recourse obligation or direct credit substitute that was not traded or sold could, in some cases, seek a rating for the sole purposes of permitting the credit enhancement to qualify for a favorable risk weight. The rating agency expressed a strong concern that, without the counterbalancing interest of investors to rely on ratings, rating agencies may have an incentive to issue inflated ratings.

In response to this concern, the 1997 Proposal included criteria to reduce the possibility of inflated ratings and inappropriate risk weights if ratings are used for a position that is not traded. A non-traded position could qualify for the ratings-based approach only if: (1) It qualified under ratings obtained from two different rating agencies; (2) the ratings were publicly available; (3) the ratings were based on the same criteria used to rate securities sold to the public; and (4) at least one position in the securitization was traded. In comments responding to the 1997 Proposal, banking organizations expressed concern about the cost and delay associated with obtaining ratings, particularly for direct credit substitutes, that they would not need absent the agencies' adoption of a ratings-based approach for risk-based capital purposes.

In this proposal, the agencies continue to permit a non-traded

[21] The example rating designations (''AAA,'' ''BBB,'' etc.) are illustrative and do not indicate any preference for, or endorsement of, any particular rating agency designation system.

[22] Similar to the current approach under which ''stripped'' mortgage-backed securities are not eligible for risk weighting at 50% on a ''pass-through'' basis, stripped mortgage-backed securities are ineligible for the 20% or 50% risk categories under the ratings based approach.

[23] ''Gross-up'' treatment means that a position is combined with all more senior positions in the transaction. The result is then risk-weighted based on the nature of the underlying assets. For example, if a banking organization retains a first-loss position in a pool of mortgage loans that qualify for a 50% risk weight, the banking organization would include the full amount of the assets in the pool, risk-weighted at 50% in its risk-weighted assets for purposes of determining its risk-based capital ratio. The low level recourse rule provides that the dollar amount of risk-based capital required for assets transferred with recourse should not exceed the maximum dollar amount for which a banking organization is contractually liable. *See,* 12 CFR part 3, appendix A, Section 3(d) (OCC); 12 CFR 208 and 225, appendix A, III.D.1(g) (FRB); 12 CFR part 325, appendix A, II.D.1 (FDIC); 12 CFR 567.6(a)(2)(i)(C) (OTS).

recourse obligation or direct credit substitute to qualify for the ratings-based approach if the banking organization obtains ratings for the position. The agencies have retained the first three of the 1997 Proposal's four criteria for non-traded positions, but have eliminated the fourth criterion, *i.e.,* the requirement that one position in the securitization be traded.

To address concerns expressed by commenters on the 1997 Proposal, however, the agencies have developed, and are also proposing, alternative approaches for determining the capital requirements for unrated direct credit substitutes, which are discussed in the following sections. Under each of these approaches, the banking organization must satisfy its supervisory agency that use of the approach is appropriate for the particular banking organization.

2. Use of Banking Organizations' Internal Risk Ratings

The proposal would permit a banking organization with a qualifying internal risk rating system to use that system to apply the ratings-based approach to the banking organization's unrated direct credit substitutes in asset-backed commercial paper programs. Internal risk ratings could be used to qualify a credit enhancement (other than a retained recourse position) for a risk weight of 100% or 200% under the ratings-based approach, but not for a risk weight of less than 100%. This relatively limited use of internal risk ratings for risk-based capital purposes is a step towards potential adoption of broader use of internal risk ratings as discussed in the Basel Committee's June 1999 Consultative Paper. Limiting the approach to these types of credit enhancements reflects the agencies' view, based on industry research and empirical evidence, that these positions are more likely than recourse positions to be of investment-grade credit quality, and that the banking organizations providing them are more likely to have internal risk rating systems for these credit enhancements that are sufficiently accurate to be relied on for risk-based capital calculations.

Most sophisticated banking organizations that participate extensively in the asset securitization business assign internal risk ratings to their credit exposures, regardless of the form of the exposure. Usually, internal risk ratings more finely differentiate the credit quality of a banking organization's exposures than the categories that the agencies use to evaluate credit risk during examinations of banking organizations (pass, substandard, doubtful, loss). Individual banking organizations' internal risk ratings may be associated with a certain probability of default, loss in the event of default, and loss volatility.

The credit enhancements that sponsors obtain for their commercial paper conduits are rarely rated. If an internal risk ratings approach were not available for these unrated credit enhancements, the provider of the enhancement would have to obtain two ratings solely to avoid the gross-up treatment that would otherwise apply to unrated positions in asset securitizations for risk-based capital purposes. However, before a provider of an enhancement decides whether to provide a credit enhancement for a particular transaction (and at what price), the provider will generally perform its own analysis of the transaction to evaluate the amount of risk associated with the enhancement.

Allowing banking organizations to use internal credit ratings harnesses information and analyses that they already generate rather than requiring them to obtain independent but redundant ratings from outside rating agencies. An internal risk ratings approach therefore has the potential to be less costly than a ratings-based approach that relies exclusively on ratings by the rating agencies for the risk-weighting of these positions.

Internal risk ratings that correspond to the rating categories of the rating agencies could be mapped to risk weights under the agencies' capital standards in a way that would make it possible to differentiate the riskiness of various unrated direct credit substitutes based on credit risk. However, the use of internal risk ratings raises concerns about the accuracy and consistency of the ratings, especially because the mapping of ratings to risk-weight categories will give banking organizations an incentive to rate their risk exposures in a way that minimizes the effective capital requirement. Banking organizations engaged in securitization activities that wish to use the internal risk ratings approach must ensure that their internal risk rating systems are adequate. Adequate internal risk rating systems usually:

(1) Are an integral part of an effective risk management system that explicitly incorporates the full range of risks arising from an organization's participation in securitization activities. The system must also fully take into account the effect of such activities on the organization's risk profile and capital adequacy as discussed in Section II.B.

(2) Link their ratings to measurable outcomes, such as the probability that a position will experience any losses, the expected losses on that position in the event of default, and the degree of variance in losses given default on that position.

(3) Separately consider the risk associated with the underlying loans and borrowers and the risk associated with the specific positions in a securitization transaction.

(4) Identify gradations of risk among ''pass'' assets, not just among assets that have deteriorated to the point that they fall into ''watch'' grades. Although it is not necessary for a banking organization to use the same categories as the rating agencies, its internal ratings must correspond to the ratings of the rating agencies so that agencies can determine which internal risk rating corresponds to each rating category of the rating agencies. A banking organization would have the responsibility to demonstrate to the satisfaction of its primary regulator how these ratings correspond with the rating agency standards used as the framework for this proposal. This is necessary so that the mapping of credit ratings to risk weight categories in the ratings-based approach can be applied to internal ratings.

(5) Classify assets into each risk grade, using clear, explicit criteria, even for subjective factors.

(6) Have independent credit risk management or loan review personnel assign or review credit risk ratings. These personnel should have adequate training and experience to ensure that they are fully qualified to perform this function.

(7) Periodically verify, through an internal audit procedure, that internal risk ratings are assigned in accordance with the banking organization's established criteria.

(8) Track the performance of its internal ratings over time to evaluate how well risk grades are being assigned, make adjustments to its rating system when the performance of its rated positions diverges from assigned ratings, and adjust individual ratings accordingly.

(9) Make credit risk rating assumptions that are consistent with, or more conservative than, the credit risk rating assumptions and methodologies of the rating agencies.

The agencies also are considering whether to develop review and approval procedures governing their respective determinations of whether a particular banking organization may use the internal risk rating process. The agencies request comment on the appropriate scope and nature of that process.

If a banking organization's rating system is found to no longer be adequate, the banking organization's primary regulator may preclude it from applying the internal risk ratings approach to new transactions for risk-based capital purposes until it has remedied the deficiencies. Additionally, depending on the severity of the problems identified, the primary regulator may also decline to rely on the internal risk ratings that the banking organization has applied to previous transactions that remain outstanding for purposes of determining the banking organization's regulatory capital requirements.

3. Ratings of Specific Positions in Structured Financing Programs

The agencies also propose to authorize a banking organization to use a rating obtained from a rating agency or other appropriate third party of unrated direct credit substitutes in securitizations that satisfy specifications set by the rating agency. The banking organization would need to demonstrate that the rating meets the same rating standards generally used by the rating agency for rating publicly-issued securities. In addition, the banking organization must also demonstrate to its primary regulator's satisfaction that the criteria underlying the rating agency's assignment of ratings for the program are satisfied for the particular direct credit substitute issued by the banking organization.

The proposal would also allow banking organizations to demonstrate to the agencies that it is reasonable and consistent with the standards of this proposal to rely on the rating of positions in a securitization structure under a program in which the banking organization participates if the sponsor of that program has obtained a rating. This aspect of the proposal is most likely to be useful to banking organizations with limited involvement in securitization activities. In addition, some banking organizations extensively involved in securitization activities already rely on ratings of the credit risk positions under their securitization programs as part of their risk management practices. Such banking organizations also could rely on such ratings under this proposal if the ratings are part of a sound overall risk management process and the ratings reflect the risk of non-traded positions to the banking organizations.

This approach could be used to qualify a direct credit substitute (but not a retained recourse position) for a risk weight of 100% or 200% of the face value of the position under the ratings-based approach, but not for a risk weight of less than 100%.

4. Use of Qualifying Rating Software Mapped to Public Rating Standards

The agencies are also proposing to allow banking organizations, particularly those with limited involvement in securitization activities, to rely on qualifying credit assessment computer programs that the rating agencies or other appropriate third parties have developed for rating otherwise unrated direct credit substitutes in asset securitizations. To qualify for use by banking organizations for risk-based capital purposes, the computer programs must be tracked to the rating standards of the rating agencies. Banking organizations must demonstrate the credibility of these programs in the financial markets, which would generally be shown by the significant use of the computer program by investors and market participants for risk assessment purposes. Banking organizations also would need to demonstrate the reliability of the programs in assessing credit risk. Banking organizations may use these programs for purposes of applying the ratings-based approach under this proposal only if the banking organization satisfies its primary regulator that the programs result in credit assessments that credibly and reliably correspond with the rating of publicly issued securities by the rating agencies. Sophisticated banking organizations with extensive securitization activities generally should use this approach only if it is an integral part of their risk management systems and their systems fully capture the risks from the banking organizations' securitization activities.

This approach could be used to qualify a direct credit substitute (but not a retained recourse position) for a risk weight of 100% or 200% of the face value of the position under the ratings-based approach, but not for a risk weight of less than 100%.

D. Managed Assets Approach

When assets are securitized, the extent to which the selling or sponsoring entity transfers the risks associated with the assets depends on the structure of the securitization and the revolving nature of the assets involved. To the extent the sponsoring institution is dependent on future securitizations as a funding source, as a practical matter, the amount of risk transferred often will be limited. Revolving credits include credit card and home equity line securitizations as well as commercial loans drawn down under long-term commitments that are securitized as collateralized loan obligations (CLOs).

The early amortization feature present in some revolving credit securitizations ensures that investors will be repaid before being subject to any risk of significant credit losses. For example, if a securitized asset pool begins to experience credit deterioration to the point where the early amortization feature is triggered, then the asset-backed securities held by investors begin to rapidly pay down. This occurs because, after an early amortization feature is triggered, new receivables that are generated from the accounts designated to the securitization trust are no longer sold to investors, but are instead retained on the sponsoring banking organization's balance sheet.

Early amortization features raise several distinct concerns about risks to the seller. First, the seller's interest in the securitized assets is effectively subordinated to the interests of the investors by the payment allocation formula applied during early amortization. Investors effectively get paid first, and the seller's residual interest will therefore absorb a disproportionate share of credit losses.

Second, early amortization can create liquidity problems for the seller. For example, a credit card issuer must fund a steady stream of new credit card receivables. When a securitization trust is no longer able to purchase new receivables due to early amortization, the seller must either find an alternative buyer for the receivables or else the receivables will accumulate on the seller's balance sheet, creating the need for another source of funding.

Third, the first two risks to the seller can create an incentive for the seller to provide implicit recourse—credit enhancement beyond any pre-existing contractual obligation—to prevent early amortization. Incentives to provide implicit recourse are to some extent present in other securitizations, because of concerns about damage to the seller's reputation and its ability to securitize assets going forward if one of its securitizations performs poorly. However, the early amortization feature creates additional and more direct financial incentives to prevent early amortization through implicit recourse.

Because of their concerns about these risks, the agencies are proposing to apply a managed assets approach to securitization transactions that incorporate early amortization provisions. The approach would require a sponsoring banking organization's securitized (off-balance sheet) receivables to be included in risk-

weighted assets when determining its risk-based capital requirements. The securitized, off-balance sheet assets would be assigned to the 20 percent risk category, thereby effectively applying a 1.6% risk-based capital charge to those assets.

The 1.6% capital charge against securitized assets could be limited in certain cases. If the sponsoring banking organization in a revolving credit securitization provides credit protection to investors, either in the form of retained recourse or a direct credit substitute, the sum of the regulatory capital requirements for the credit protection and the 1.6% charge on the off-balance sheet securitized assets may not exceed 8% of securitized assets for that particular securitization transaction.

A managed assets approach would require a banking organization to hold additional capital against the potential credit and liquidity risks stemming from the early amortization provisions of revolving credit securitization structures. This proposed capital charge would ensure that a banking organization maintain at least a minimum level of capital against the risks that arise when early amortization provisions are present in securitizations of revolving credits.

The agencies request comment on the purpose of early amortization provisions, the proposed managed assets approach, and on any potential effects that the approach will have on current industry practices involving revolving credit securitizations. The agencies also recognize that there may be concerns that the managed assets approach may not produce safety and soundness benefits commensurate with the additional regulatory burden that would result from a 20% risk weight on managed assets, and they request comment on possible alternative measures that would address more effectively the risks arising from early amortization provisions in revolving securitizations. For example, one alternative to the managed assets approach described here would be to require greater public disclosure of securitization performance. This additional information could allow market participants and regulators to better assess the risks inherent in revolving securitizations with early amortization provisions and the capital level appropriate for those risks. The agencies also request comment on whether the benefits of greater public disclosure outweigh the costs associated with increased reporting.

IV. Effective Date of a Final Rule Resulting From This Proposal

The agencies intend that any final rules adopted as a result of this proposal that result in increased risk-based capital requirements for banking organizations will apply only to securitization activities (as defined in the proposal) entered into or acquired after the effective date of those final rules. Conversely, any final rules that result in reduced risk-based capital requirements for banking organizations may be applied to all transactions outstanding as of the effective date of those final rules and to all subsequent transactions. Because some ongoing securitization conduits may need additional time to adapt to any new capital treatments, the agencies intend to permit banking organizations to apply the existing capital rules to asset securitizations with no fixed term, *e.g.*, asset-backed commercial paper conduits, for up to two years after the effective date of any final rule.

V. Request for Comment

The agencies request comment on all aspects of this proposal, as well as on the specific issues described in the preamble.

VI. Regulatory Flexibility Act

OCC: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC certifies that this proposal will not have a significant impact on a substantial number of small entities. 5 U.S.C. 601 *et seq.* The provisions of this proposal that increase capital requirements are likely to affect large national banks almost exclusively. Small national banks rarely sponsor or provide direct credit substitutes in asset securitizations. Accordingly, a regulatory flexibility analysis is not required.

Board: Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board has determined that this proposal will not have a significant impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Board's comparison of the applicability section of this proposal with Call Report Data on all existing banks shows that application of the proposal to small entities will be the rare exception. Accordingly, a regulatory flexibility analysis is not required. In addition, because the risk-based capital standards generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

FDIC: Pursuant to section 605(b) of the Regulatory Flexibility Act (Public Law 96–354, 5 U.S.C. 601 *et seq.*), the FDIC certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Comparison of Call Report data on FDIC-supervised banks to the items covered by the proposal that result in increased capital requirements shows that application of the proposal to small entities will be the infrequent exception.

OTS: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal will not have a significant impact on a substantial number of small entities. A comparison of TFR data on OTS-supervised thrifts shows that the proposed rule would have little impact on the overall level of capital required at small thrifts, since capital requirements (other than the risk-based capital standards) are typically more binding on smaller thrifts. Moreover, the provisions of this proposal that may increase capital requirements are unlikely to affect small savings associations. Small thrifts rarely provide direct credit substitutes in asset securitizations and do not serve as sponsors of revolving securitizations. Accordingly, a regulatory flexibility analysis is not required.

VII. Paperwork Reduction Act

The Agencies have determined that this proposal does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

VIII. Executive Order 12866

OCC: The OCC has determined that this proposal is not a significant regulatory action for purposes of Executive Order 12866. The OCC expects that any increase in national banks' risk-based capital requirement, resulting from the proposed treatment of direct credit substitutes largely will be offset by the ability of those banks to reduce their capital requirement in accordance with the ratings-based approach. The managed assets position of the proposal may require a limited number of national banks to raise additional capital in order to remain in the category to which they are assigned currently under the OCC's prompt corrective action framework. The OCC believes that the costs associated with raising this new capital are below the thresholds prescribed in the Executive Order. Nonetheless, the impact of any final rule resulting from this proposal will depend on factors for which the agencies do not currently collect industry-wide information, such as the

proportion of bank-provided direct credit substitutes that would be rated below investment grade. The OCC, therefore, welcomes any quantitative information national banks wish to provide about the impact they expect the various portions of this proposal to have if issued in final form.

OTS: The Director of the OTS has determined that this proposal does not constitute a ''significant regulatory action'' under Executive Order 12866. Since OTS already applies a ''gross up'' treatment for recourse obligations and for most direct credit substitutes, the proposal generally is likely to reduce the risk-based capital requirements for thrifts. The proposed rule would increase capital requirements only for certain direct credit substitutes issued in connection with asset securitizations or for thrifts that may serve as sponsors of revolving securitization programs. Currently, thrifts rarely participate in such activities. As a result, OTS has concluded that the proposal will have only minor effects on the thrift industry.

IX. OCC and OTS—Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have determined that this proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million or more in any one year. Therefore, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, this proposal will reduce inconsistencies in the agencies' risk-based capital standards and, in certain circumstances, will allow banking organizations to maintain lower amounts of capital against certain rated recourse obligations and direct credit substitutes.

X. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

(1) Have we organized the material to suit your needs?

(2) Are the requirements in the rule clearly stated?

(3) Does the rule contain technical language or jargon that isn't clear?

(4) Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

(5) Would more (but shorter) sections be better?

(6) What else could we do to make the rule easier to understand?

XI. FDIC Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. Law 105–277).

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

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

12 CFR Part 325

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

§ 3.4 [Amended]

2. In § 3.4:

A. The undesignated paragraph is designated as paragraph (a);

B. The second sentence in the newly designated paragraph (a) is revised; and

C. New paragraph (b) is added to read as follows:

§ 3.4 Reservation of authority.

(a) * * * Similarly, the OCC may find that a particular intangible asset need not be deducted from Tier 1 or Tier 2 capital. * * *

(b) Notwithstanding the risk categories in section 3 of appendix A to this part, the OCC may find that the assigned risk weight for any asset or the credit equivalent amount or credit conversion factor for any off-balance sheet item does not appropriately reflect the risks imposed on a bank and may require another risk weight, credit equivalent amount, or credit conversion factor that the OCC deems appropriate. Similarly, if no risk weight, credit equivalent amount, or credit conversion factor is specifically assigned, the OCC may assign any risk weight, credit equivalent amount, or credit conversion factor that the OCC deems appropriate. In making its determination, the OCC considers risks associated with the asset or off-balance sheet item as well as other relevant factors.

Appendix A to Part 3—[Amended]

3. In section 3 of appendix A:

A. Footnote 11a in paragraph (a)(3)(v) is revised;

B. Paragraph (b) introductory text is amended by adding a new sentence at its end;

C. Paragraph (b)(1)(i) and footnote 13 are removed and reserved;

D. Paragraph (b)(1)(ii) is revised;

E. Paragraph (b)(1)(iii) and footnote 14 are removed and reserved;

F. Footnotes 16 and 17 in paragraphs (b)(2)(i) and (ii), respectively, are revised; and

G. Paragraph (d) is revised to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

§ 3 Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(3) * * *

(v) * * * [11a]

* * * * *

(b) * * * However, direct credit substitutes, recourse obligations, and securities issued in connection with asset securitizations are treated as described in section 3(d) of this appendix A.

(1) * * *

(ii) Risk participations purchased in bankers' acceptances.

* * * * *

(2) * * *

(i) * * * [16] * * *

(ii) * * * [17] * * *

* * * * *

(d) *Recourse obligations, direct credit substitutes, and asset-backed securities*—(1) *Definitions.* For purposes of this section 3 of this appendix A:

(i) *Covered representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate a bank to absorb losses arising from credit risk in the assets transferred or the loans serviced. Covered representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral.

(ii) *Credit derivative* means a contract that allows one party (the beneficiary) to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the guarantor). The value of a credit derivative is dependent, at least in part, on the credit performance of a ''reference asset.''

(iii) *Direct credit substitute* means an arrangement in which a bank assumes credit risk associated with an on-or off-balance sheet asset that was not previously owned by the bank (third-party asset) and the risk assumed by the bank exceeds the *pro rata* share of the bank's interest in the third-party asset. If a bank has no claim on the third-party asset, then the bank's assumption of any risk of credit loss is a direct credit substitute. Direct credit substitutes include:

(A) Financial guarantee-type standby letters of credit that support financial claims on a third party that exceed a bank's *pro rata* share in the financial claim;

(B) Guarantees, surety arrangements, credit derivatives and similar instruments backing financial claims that exceed a bank's *pro rata* share in the financial claim;

(C) Purchased subordinated interests that absorb more than their *pro rata* share of losses from the underlying assets;

(D) Entering into a credit derivative contract under which the bank assumes more than its *pro rata* share of credit risk on a third-party asset;

(E) Loans or lines of credit that provide credit enhancement for the securitization activities of a third party; and

(F) Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes covered representations and warranties with respect to the loans serviced. Cash advances described in section 4(d)(1)(vii) of this appendix A are not direct credit substitutes.

(iv) *Externally rated* means that an instrument or obligation has received a credit rating from at least one nationally recognized statistical rating organization.

(v) *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

(vi) *Financial guarantee-type standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

(A) To repay money borrowed by, or advanced to, or for the account of, a second party (the account party); or

(B) To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

(vii) *Mortgage servicer cash advance* means funds that a mortgage servicer advances to ensure an uninterrupted flow of payments, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the loan. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if:

(A) The servicer is entitled to full reimbursement and this right is not subordinated to other claims on the cash flows from the underlying asset pool; or

(B) For any one loan, the servicer's obligation to make nonreimbursable advances is contractually limited to an insignificant amount.

(viii) *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

(ix) *Recourse* means the retention, by a bank, of any risk of credit loss directly or indirectly associated with a transferred asset that exceeds a *pro rata* share of that bank's claim on the asset. If a bank has no claim on a transferred asset, then the retention of any risk of credit loss is recourse. A recourse obligation typically arises when a bank transfers assets and retains an explicit obligation to repurchase assets or to absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

(A) Making covered representations and warranties on transferred assets;

(B) Retaining loan servicing assets pursuant to an agreement under which the bank will be responsible for losses associated with the loans serviced. Mortgage servicer cash advances, as defined in section 4(d)(1)(vii) of this appendix A, are not recourse arrangements;

(C) Retaining a subordinated interest that absorbs more than its *pro rata* share of losses from the underlying assets;

(D) Selling assets under an agreement to repurchase, if the assets are not already included on the balance sheet; and

(E) Selling loan strips without contractual recourse where the maturity

[11a] The portion of multifamily residential property loans that is sold subject to a *pro rata* loss sharing arrangement may be treated by the selling bank as sold to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank. The portion of multifamily residential property loans sold subject to any loss sharing arrangement other than *pro rata* sharing of the loss shall be accorded the same treatment as any other asset sold under an agreement to repurchase or sold with recourse under section 3(d)(2) of this appendix A.

[16] Participations in performance-based standby letters of credit are treated in accordance with section 3(d) of this appendix A.

[17] Participations in commitments are treated in accordance with section 3(d) of this appendix A.

of the transferred portion of the loan is shorter than the maturity of the whole loan.

(x) *Risk participation* means a participation in which the originating bank remains liable to the beneficiary for the full amount of an obligation (*e.g.* a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

(xi) *Securitization* means the pooling and repackaging of assets or other credit exposures into securities that can be sold to investors, including transactions that create stratified credit risk positions.

(xii) *Traded position* means a recourse obligation, direct credit substitute or asset-backed security retained, assumed or issued in connection with a securitization that is externally rated, where there is an expectation that, in the near future, the rating will be relied upon by:

(A) Investors to purchase the position; or

(B) A third party to enter into a transaction involving the position, such as a purchase, loan or repurchase agreement.

(2) *Credit equivalent amounts and risk weights of recourse obligations and direct credit substitutes*—(i) *Credit-equivalent amount.* Except as provided in sections 3(d)(3) and (4) of this appendix A, the credit-equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit-enhanced assets for which the bank directly or indirectly retains or assumes credit risk multiplied by a 100% conversion factor.

(ii) *Risk-weight factor.* To determine the bank's risk-weighted assets for off-balance sheet recourse obligations and direct credit substitutes, the credit equivalent amount is assigned to the risk category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral. For a direct credit substitute that is an on-balance sheet asset (*e.g.,* a purchased subordinated security), a bank must calculate risk-weighted assets using the amount of the direct credit substitute and the full amount of the assets it supports, *i.e.,* all the more senior positions in the structure.

(3) *Credit equivalent amount and risk weight of participations in, and syndications of, direct credit substitutes.* The credit equivalent amount for a participation interest in, or syndication of, a direct credit substitute is calculated and risk weighted as follows:

(i) In the case of a direct credit substitute in which a bank has conveyed a risk participation, the full amount of the assets that are supported by the direct credit substitute is converted to a credit equivalent amount using a 100% conversion factor. The *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is then assigned to whichever risk-weight category is lower: The risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral, or the risk-weight category appropriate to the institution acquiring the participation. The *pro rata* share of the credit equivalent amount that has not been participated out is assigned to the risk-weight category appropriate to the obligor, guarantor, or collateral.

(ii) In the case of a direct credit substitute in which the bank has acquired a risk participation, the acquiring bank's percentage share of the direct credit substitute is multiplied by the full amount of the assets that are supported by the direct credit substitute and converted using a 100% credit conversion factor. The resulting credit equivalent amount is then assigned to the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral.

(iii) In the case of a direct credit substitute that takes the form of a syndication where each bank is obligated only for its *pro rata* share of the risk and there is no recourse to the originating bank, each bank's credit equivalent amount will be calculated by multiplying only its *pro rata* share of the assets supported by the direct credit substitute by a 100% conversion factor. The resulting credit equivalent amount is then assigned to the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral.

(4) *Externally rated positions: Credit-equivalent amounts and risk weights.*—(i) *Traded positions.* With respect to a recourse obligation, direct credit substitute, or asset-backed security that is a ''traded position'' and that has received an external rating that is one grade below investment grade or better, the bank shall multiply the face amount of the position by the appropriate risk weight, determined in accordance with Table B. [24]

[24] Stripped mortgage-backed securities, such as interest-only or principal-only strips, may be assigned only, at a minimum, to the 100% risk category.

TABLE B

Rating category	Examples	Risk weight (percent)
Highest or second highest investment grade.	AAA, AA ..	20
Third highest investment grade.	A	50
Lowest investment grade.	BBB	100
One category below investment grade.	BB	200

(ii) *Non-traded positions.* A recourse obligation or direct credit substitute extended in connection with a securitization that is not a ''traded position'' is assigned a risk weight in accordance with section 3(d)(4)(i) of this appendix A if:

(A) It has been externally rated one category below investment grade or better by two NRSROs;

(B) The ratings are publicly available; and

(C) The ratings are based on the same criteria used to rate securities sold to the public. If the two ratings are different, the lower rating will determine the risk category to which the recourse obligation or direct credit substitute will be assigned.

(5) *Senior positions not externally rated.* For a recourse obligation, direct credit substitute, or asset-backed security that is not externally rated but is senior in all credit-risk related features to a traded position (including collateralization), a bank may apply a risk weight to the face amount of the senior position in accordance with section 3(d)(4)(i) of this appendix A, based upon the traded position, subject to the bank satisfying the OCC that this treatment is appropriate.

(6) *Direct credit substitutes that are not externally rated.* A direct credit substitute extended in connection with a securitization that is not externally rated may risk weight the face amount of the direct credit substitute based on the bank's determination of the credit rating of the position, as specified in Table C. In order to qualify for this treatment, the bank's system for determining the credit rating of the direct credit substitute must meet one of the three alternative standards set out in section 3(d)(6)(i) through (iii) of this appendix A.

TABLE C

Rating category	Examples	Risk weight (percent)
Highest or second highest investment grade.	AAA, AA ..	100
Third highest investment grade.	A	100
Lowest investment grade.	BBB	100
One category below investment grade.	BB	200

(i) *Internal risk rating used for asset-backed programs.* The direct credit substitute is issued in connection with an asset-backed commercial paper program sponsored by the bank and the bank's internal credit risk rating system is adequate. Adequate internal credit risk rating systems usually contain the following criteria: [25]

(A) The internal credit risk system is an integral part of the bank's risk management system that explicitly incorporates the full range of risks arising from a bank's participation in securitization activities;

(B) Internal credit ratings are linked to measurable outcomes, such as the probability that the position will experience any loss, the position's expected loss given default, and the degree of variance in losses given default on that position;

(C) The bank's internal credit risk system must separately consider the risk associated with the underlying loans or borrowers, and the risk associated with the structure of a particular securitization transaction;

(D) The bank's internal credit risk system must identify gradations of risk among ''pass'' assets and other risk positions;

(E) The bank must have clear, explicit criteria that are used to classify assets into each internal risk grade, including subjective factors;

(F) The bank must have independent credit risk management or loan review personnel assigning or reviewing the credit risk ratings;

(G) An internal audit procedure should periodically verify that internal risk ratings are assigned in accordance with the banking organization's established criteria.

(H) The bank must monitor the performance of the internal credit risk ratings assigned to nonrated, nontraded direct credit substitutes over time to determine the appropriateness of the initial credit risk rating assignment and adjust individual credit risk ratings, or the overall internal credit risk ratings system, as needed; and

(I) The internal credit risk system must make credit risk rating assumptions that are consistent with, or more conservative than, the credit risk rating assumptions and methodologies of NRSROs.

(ii) *Program ratings.* The direct credit substitute is issued in connection with a securitization program and a NRSRO (or other entity satisfactory to the OCC) has reviewed the terms of the securitization and stated a rating for positions associated with the program. If the program has options for different combinations of assets, standards, internal credit enhancements and other relevant factors, and the NRSRO or other entity specifies ranges of rating categories to them, the bank may apply the rating category applicable to the option that corresponds to the bank's position. The bank must demonstrate to the OCC's satisfaction that the credit risk rating assigned to the program meets the same standards generally used by NRSROs for rating traded positions. In addition, the bank must also demonstrate to the OCC's satisfaction that the criteria underlying the NRSRO's assignment of ratings for the program are satisfied for the particular direct credit substitute issued by the bank. If a bank participates in a securitization sponsored by another party, the OCC may authorize the bank to use this approach based on a program rating obtained by the sponsor of the program.

(iii) *Computer program.* The bank is using an acceptable credit assessment computer program to determine the rating of a direct credit substitute extended in connection with a securitization. A NRSRO (or another entity approved by the OCC) must have developed the computer program and the bank must demonstrate to the OCC's satisfaction that ratings under the program correspond credibly and reliably with the rating of traded positions.

(7) *Off-balance sheet securitized assets subject to early amortization.* An asset that is sold by a bank into a revolving securitization sponsored by the bank, notwithstanding such sale, shall be converted to an on-balance sheet credit equivalent using a 100% conversion factor, and assigned to the 20 percent risk-weight category, if the securitization has an early amortization feature.[26] The total capital requirement for these assets, including capital charges arising from any retained recourse or direct credit substitute, may not exceed 8% of the amount of the assets in the securitization.

(8) *Limitations on risk-based capital requirements*—(i) *Low-level exposure rule.* If the maximum contractual liability or exposure to loss retained or assumed by a bank is less than the effective risk-based capital requirement for the asset supported by the bank's position, the risk based capital required under this appendix A is limited to the bank's contractual liability, less any recourse liability account established in accordance with generally accepted accounting principles.

(ii) *Related on-balance sheet assets.* If an asset is included in the calculation of the risk-based capital requirement under this section 3(d) of this appendix A and also appears as an asset on a bank's balance sheet, the asset is risk-weighted only under this section 3(d) of this appendix A, except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In that case, both the on-balance sheet servicing assets and the related recourse obligations or direct credit substitutes are incorporated into the risk-based capital calculation.

* * * * *

4. In appendix A, Table 2, ''100 Percent Conversion Factor,'' Item 1 is revised to read as follows:

* * * * *

Table 2—Credit Conversion Factors for Off-Balance Sheet Items

100 Percent Conversion Factor

1. [Reserved]

* * * * *

Dated: February 9, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

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

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

Authority: 12 U.S.C. 24, 36, 92(a), 93(a), 248(a), 248(c), 321–338a, 371d, 461, 481–486,

[25] The adequacy of a bank's use of its internal credit risk rating system must be demonstrated to the OCC considering the criteria listed in this section and the size and complexity of the credit exposures assumed by the bank.

[26] This requirement does not apply to interests that the seller has retained.

601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835(a), 1882, 2901–2907, 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; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208:

A. The three introductory paragraphs to section *II.* are revised;

B. A new undesignated fifth paragraph is added at the end of section *III.*A;

C. In section *III.*B., paragraph 3 is revised and footnote 23 is removed, and in paragraph 4, footnote 24 is removed;

D. In section *III.*C., paragraphs 1 through 3, footnotes 25 through 37 are redesignated as footnotes 23 through 35, and paragraph 4 is revised;

E. In section *III.*D., the introductory paragraph and paragraph 1 are revised;

F. In sections *III.*D. and *III.*E., footnote 46 is removed and footnotes 47 through 51 are redesignated as footnotes 44 through 48; and

G. In section *IV.*B., footnote 52 is removed.

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

* * * * *

II. * * *

A bank's qualifying total capital consists of two types of capital components: ''core capital elements'' (comprising Tier 1 capital) and ''supplementary capital elements'' (comprising Tier 2 capital). These capital elements and the various limits, restrictions, and deductions to which they are subject, are discussed below and are set forth in Attachment II.

The Federal Reserve will, on a case-by-case basis, determine whether and, if so, how much of any liability that does not fit wholly within the terms of one of the capital categories set forth below or that does not have an ability to absorb losses commensurate with the capital treatment otherwise specified below will be counted as an element of Tier 1 or Tier 2 capital. In making such a determination, the Federal Reserve will consider the similarity of the liability to liabilities explicitly treated in the guidelines, the ability of the liability to absorb losses while the bank operates as a going concern, the maturity and redemption features of the liability, and other relevant terms and factors. To qualify as an element of Tier 1 or Tier 2 capital, a capital instrument may not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

Redemptions of permanent equity or other capital instruments before stated maturity could have a significant impact on a bank's overall capital structure. Consequently, a bank considering such a step should consult with the Federal Reserve before redeeming any equity or debt capital instrument (prior to maturity) if such redemption could have a material effect on the level or composition of the institution's capital base.[4]

* * * * *

III. * * *

A. * * *

The Federal Reserve will, on a case-by-case basis, determine the appropriate risk weight for any asset or the credit equivalent amount of an off-balance sheet item that does not fit wholly within the terms of one of the risk weight categories set forth below or that imposes risks on a bank that are incommensurate with the risk weight otherwise specified below for the asset or off-balance sheet item. In addition, the Federal Reserve will, on a case-by-case basis, determine the appropriate credit conversion factor for any off-balance sheet item that does not fit wholly within the terms of one of the credit conversion factors set forth below or that imposes risks on a bank that are incommensurate with the credit conversion factors otherwise specified below for the off-balance sheet item. In making such a determination, the Federal Reserve will consider the similarity of the asset or off-balance sheet items explicitly treated in the guidelines, as well as other relevant factors.

* * * * *

B. * * *

3. *Recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities.* Direct credit substitutes, assets transferred with recourse, and securities issued in connection with asset securitizations and structured financings are treated as described below. Use of the term ''asset securitizations'' or ''securitizations'' in this rule includes structured financings, as well as asset securitization transactions.

a. *Definitions*—(i) *Credit derivatives* are on- or off-balance sheet notes or contracts that allow one party (the ''beneficiary'') to transfer the credit risk of a ''reference asset,'' which it often owns, to another party (the ''guarantor''). The value of a credit derivative is dependent, at least in part, on the credit performance of the reference asset, which typically is a publicly traded loan or corporate bond.

(ii) *Credit-enhancing representations and warranties* means representations and warranties extended by a bank when it transfers assets (including loan servicing assets) or assumed by the bank when it purchases loan servicing assets that obligate the bank to absorb credit losses on transferred assets or serviced loans. These representations and warranties typically arise when the bank agrees to protect purchasers or some other party from losses due to the default or nonperformance of the obligor on the transferred assets or serviced loans, or insufficiency in the value of collateral supporting the transferred assets or serviced loans.

(iii) *Direct credit substitute* means an arrangement in which a bank *assumes,* in form or in substance, any risk of credit loss directly or indirectly associated with a *third-party* asset or other financial claim, that exceeds the bank's *pro rata* share of the asset or claim. If the bank has no claim on the asset, then the assumption of *any* risk of loss is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(*1*) Financial guarantee-type standby letters of credit that support financial claims on the account party;

(*2*) Guarantees, surety arrangements, credit derivatives, and irrevocable guarantee-type instruments backing financial claims such as outstanding securities, loans, or other financial liabilities, or that back off-balance sheet items against which risk-based capital must be maintained;

(*3*) Purchased subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

(*4*) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(*5*) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than mortgage servicer cash advances as defined in paragraph *III.*B.3.a.(vi) of this section), or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the serviced loans.

(iv) *Externally rated* means, with respect to an instrument or obligation, that the instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization.

(v) *Financial guarantee-type standby letter of credit* means any letter of credit or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(*1*) To repay money borrowed by, advanced to, or for the account of, the account party; or

(*2*) To make payment on account of any indebtedness undertaken by the account party in the event that the account party fails to fulfill its obligation to the beneficiary.

(vi) *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if the mortgage servicer is entitled to full reimbursement or, for any one residential mortgage loan, nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal on that loan.

(vii) *Nationally recognized statistical rating organization* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)).

(viii) *Recourse* means an arrangement in which a bank *retains,* in form or in

[4] Consultation would not ordinarily be necessary if an instrument were redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument and the organization's capital position is considered fully adequate by the Federal Reserve.

substance, any risk of credit loss directly or indirectly associated with a transferred asset that exceeds a *pro rata* share of the bank's claim on the asset. If a bank has no claim on a transferred asset, then the retention of any risk of loss is recourse. A recourse obligation typically arises when an institution transfers assets and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. Recourse obligations include, but are not limited to:

(*1*) Credit-enhancing representations and warranties on the transferred assets that obligate the servicer to absorb credit losses, including early-default clauses;

(*2*) Retained loan servicing assets if the servicer is responsible for losses associated with the loans being serviced other than mortgage servicer cash advances as defined in paragraph *III*.B.3.a.(vi) of this section.

(*3*) Retained subordinated interests or securities or credit derivatives that absorb more than their *pro rata* share of losses from the underlying assets;

(*4*) Assets sold under an agreement to repurchase if the assets are not already included on the balance sheet; and

(*5*) Loan strips sold without direct recourse where the maturity of the transferred loan that is drawn is shorter than the maturity of the commitment.

(ix) *Securitization* means the pooling and repackaging of loans or other credit exposures into securities that can be sold to investors. For purposes of this appendix A, securitization also includes structured finance transactions or programs that generally create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

(x) *Traded position* means a recourse obligation, direct credit substitute, or asset-or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that is rated with a reasonable expectation that, in the near future:

(*1*) The position would be sold to investors relying on the rating; or

(*2*) A third party would, in reliance on the rating, enter into a transaction such as a purchase, loan, or repurchase agreement involving the position.

b. *Amount of position to be included in risk-weighted assets.* Other types of recourse obligations or direct credit substitutes, other than those listed in section III.B.3.b.(i)(*1*) through (*7*) of this appendix A, should be treated in accordance with the principles contained in section *III*.B.3. of this appendix A. The treatment of direct credit substitutes that have been syndicated or in which risk participations have been conveyed or acquired is set forth in section *III*.D.1 of this appendix A.

(i) *General rule for determining the credit equivalent amount and risk weight of recourse obligations and direct credit substitutes.* Except as otherwise provided in section *III* of this appendix A, the risk weighted asset amount or the credit equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed. This credit equivalent amount is assigned to the risk weight category appropriate to the obligor or, if relevant, the guarantor or nature of any collateral. Thus, a bank that extends a partial direct credit substitute, *e.g.,* a financial standby letter of credit, that absorbs the first 10 percent of loss on a transaction, must maintain capital against the full amount of the assets being supported. Furthermore, for direct credit substitutes that are on-balance sheet assets, *e.g.,* purchased subordinated securities, banks must maintain capital against the amount of the direct credit substitutes and the full amount of the assets being supported, *i.e.,* all more senior positions. This treatment is subject to the low-level capital rule discussed in section *III*.B.3.c.i. of this appendix A. For purposes of this appendix A, the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed means for:

(*1*) A financial guarantee-type standby letter of credit, surety arrangement, credit derivative, guarantee, or irrevocable guarantee-type instruments, the full amount of the assets that the direct credit substitute fully or partially supports;

(*2*) A subordinated interest or security, the amount of the subordinated interest or security plus all more senior interests or securities;

(*3*) Mortgage servicing assets that are recourse obligations or direct credit substitutes, the outstanding amount of the loans serviced;

(*4*) Credit-enhancing representations and warranties, the amount of the assets subject to the representations or warranties;

(*5*) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party, the full amount of the enhanced financial obligations;

(*6*) Loans strips, the amount of the loans; and

(*7*) For assets sold with recourse, the amount of assets for which risk of loss is directly or indirectly retained, less any applicable recourse liability account established in accordance with generally accepted accounting principles.

(ii) *Determining the credit risk weight of recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities that are rated within one of the five highest rating categories.* (*1*) A traded position is eligible for the risk-based capital treatment described in this paragraph if its external rating is within one of the five highest rating categories, *e.g.,* AAA through BB, used by a nationally-recognized statistical rating organization. A recourse obligation, direct credit substitute, or asset- or mortgage-backed security which is not externally rated but is senior in all respects to a traded position that is externally rated, including access to any collateral, is also eligible for the risk-based capital treatment described in this paragraph *III*.B.3.b.(ii) as if it had the same rating as the traded position. This treatment for the unrated senior position is subject to current and prospective supervisory guidance on a case-by-case basis.

(*A*) *Two highest investment grades.* Except as otherwise provided in section *III.* of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in either of the two highest investment grade categories, *e.g.,* AAA or AA, is assigned to the 20 percent risk category.

(*B*) *Third highest investment grade.* Except as otherwise provided in this section *III.* of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset-or mortgage-backed security that is rated in the third highest investment grade category, *e.g.,* A, is assigned to the 50 percent risk category.

(*C*) *Lowest investment grade.* Except as otherwise provided in this section *III.* of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset-or mortgage-backed security that is rated in the lowest investment grade category, *e.g.,* BBB, is assigned to the 100 percent risk category.

(*D*) *One category below investment grade.* Except as otherwise provided in this section *III.* of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset-or mortgage-backed security that is rated in the next lower category below the lowest investment grade category, *e.g.,* BB, is assigned a 200 percent risk weight.

(*2*) Nontraded recourse obligations, direct credit substitutes, or asset-or mortgage-backed securities that are retained, assumed or issued in connection with an asset securitization also are eligible for the treatment described in this paragraph *III*.B.3.b.(ii) if they are externally rated within one of the five highest rating categories by two nationally-recognized statistical rating organizations, the ratings are publicly available, and the ratings are based on the same criteria used to rate securities sold to the public.

(*3*) A direct credit substitute extended in connection with an asset securitization that is not a traded position and is not externally rated by a nationally-recognized statistical rating organization (such as a letter of credit) may be eligible for the treatment described in section *III*.B.3.b.(ii)(1)(*C*) and (D) of this appendix A, *i.e., a minimum risk weight of 100 percent,* if it satisfies the criteria of one of the following approaches deemed appropriate for the institution by the Federal Reserve:

(*A*) A bank, under its qualifying internal risk rating system, assigns an internal rating to a direct credit substitute extended to an asset-backed commercial paper program that is equivalent to an external credit rating one category below investment grade or higher provided by a nationally recognized statistical rating organization. A qualifying internal risk rating system must be reviewed and deemed appropriate by the Federal Reserve and must satisfy the following criteria and any other prudential standards that the Federal Reserve determines are necessary. Qualifying internal risk rating systems at a minimum must:

(*i*) Be an integral part of an effective risk management system that explicitly incorporates the full range of risks arising from a bank's participation in securitization activities;

(*ii*) Link the internal ratings to measurable outcomes, such as the probability that the position will experience any loss, the position's expected loss given default, and the degree of variance in losses given default on that position;

(*iii*) Separately consider the risk associated with the underlying loans or borrowers, and the risk associated with the structure of a particular securitization transaction;

(*iv*) Identify gradations of risk among ''pass'' assets and other risk positions;

(*v*) Have clear, explicit criteria that are used to classify assets into each internal risk grade, including subjective factors;

(*vi*) Have independent credit risk management or loan review personnel assigning or reviewing the credit risk ratings;

(*vii*) Have an internal audit procedure that periodically verifies that the internal credit risk ratings are assigned in accordance with the established criteria;

(*viii*) Monitor the performance of the internal ratings assigned to nonrated nontraded direct credit substitutes over time to determine the appropriateness of the initial rating assignment and adjust individual ratings accordingly; and

(*ix*) Be consistent with, or more conservative than, the rating assumptions and methodologies of nationally recognized statistical rating organizations.

(*B*) A bank's direct credit substitute extended to a securitization or structured finance program is reviewed by a nationally recognized statistical rating organization, in conjunction with a review of the overall program, and is assigned a rating or its equivalent. If the program has options for different combinations of assets, standards, internal credit enhancements, and other relevant factors, the rating organization may specify ranges of rating categories that may apply premised on which options are utilized by the bank's risk position. The bank must demonstrate to the Federal Reserve that the nationally recognized statistical rating organization's programmatic rating for its risk position generally meets the same standards used by the rating organization for rating traded positions, and that the rating organization's underlying premises are satisfied for particular direct credit substitutes issued by the bank. If a bank participates in a securitization or structured finance program sponsored by another party, the Federal Reserve may authorize the bank to use this approach based on a programmatic rating obtained by the sponsor of the program.

(*C*) A bank may rate its credit risk exposure to direct credit substitutes by relying on a qualifying credit assessment computer program. A nationally recognized statistical rating agency or other acceptable third party must have developed such a credit assessment system for determining the credit risk of direct credit substitutes and other stratified credit positions. Banks must demonstrate to the Federal Reserve that ratings under such a credit assessment computer program correspond credibly and reliably with the ratings assigned by the rating agencies to publicly traded securities.

(iii) *Determining the credit risk weight for off-balance sheet securitized assets that are subject to early amortization provisions.* If a bank securitizes revolving assets, such as credit cards, home equity lines, or commercial loans issued under lines of credit, in a securitization transaction that it has sponsored and which includes early amortization provisions, then the sponsoring bank must maintain risk-based capital against the off-balance sheet securitized assets from the inception of the transaction. An early amortization feature is a provision that, under specified conditions, returns principal to investors prior to the expected payment dates and generally is a result of a deteriorating portfolio. The securitized, off-balance sheet assets are to be converted to an on-balance sheet credit equivalent amount using the 100 percent conversion factor and assigned to the 20 percent risk category. However, this capital requirement, when combined with the capital requirements for any retained recourse or direct credit substitute associated with the securitized assets, is limited to a total of 8 percent of the off-balance sheet securitized assets.

c. *Limitations on risk-based capital requirements.* (i) *Low-level exposure.* If the maximum contractual liability or exposure to loss retained or assumed by a bank in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual liability or exposure to loss, less any liability account established in accordance with generally accepted accounting principles. This limitation does not apply to assets sold with implicit recourse.

(ii) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a bank holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the bank continued to hold these loans as an on-balance sheet asset.

(iii) *Related on-balance sheet assets.* If a recourse obligation or direct credit substitute subject to section *III*.B.3. of this appendix A also appears as a balance sheet asset, the balance sheet asset is not included in a bank's risk-weighted assets to the extent the value of the balance sheet asset is already included in the off-balance sheet credit equivalent amount for the recourse obligation or direct credit substitute, except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In the latter cases, both the on-balance sheet assets and the related recourse obligations and direct credit substitutes are incorporated into the risk-based capital calculation.

* * * * *

C. * * *

4. *Category 4: 100 percent.* a. All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

b. This category includes long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk.[36] This category includes all claims on foreign and domestic private-sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims;[37] investments in fixed assets, premises, and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; all stripped mortgage-backed securities and similar instruments; and commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans secured by residential property that qualify for a lower risk weight).

c. Also included in this category are industrial-development bonds and similar obligations issued under the auspices of state or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest, and all obligations of states or political subdivisions of countries that do not belong to the OECD-based group.

d. The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: Investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including those that may have been grandfathered into capital.

D. * * *

The face amount of an off-balance sheet item is generally incorporated into risk-weighted assets in two steps. The face amount is first multiplied by a credit

[36] Such assets include all nonlocal currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by subsidiary depository institutions.

[37] Customer liabilities on acceptances outstanding involving nonstandard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

conversion factor, except for direct credit substitutes and recourse obligations as discussed in section III.D.1. of this appendix A. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.[38] Attachment IV to this appendix A sets forth the conversion factors for various types of off-balance sheet items.

1. *Items with a 100 percent conversion factor.* a. Except as otherwise provided in section *III*.B.3. of this appendix A, the full amount of an asset or transaction supported, in whole or in part, by a direct credit substitute or a recourse obligation. Direct credit substitutes and recourse obligations are defined in section *III*.B.3. of this appendix A.

b. Sale and repurchase agreements and forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with certain drawdown at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[39] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

c. Securities lent by a bank are treated in one of two ways, depending upon whether the lender is at risk of loss. If a bank, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the transaction is excluded from the risk-based capital calculation. If, alternatively, a bank lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor, or if applicable to any collateral delivered to the lending bank, or, the independent custodian acting on the lending bank's behalf. Where a bank is acting as agent for a customer in a transaction involving the lending or sale of securities that is collateralized by cash delivered to the bank, the transaction is deemed to be collateralized by cash on deposit in the bank for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities and the cash collateral received and any reinvestment risk associated with that cash collateral is borne by the customer.

d. In the case of direct credit substitutes in which a risk participation[40] has been conveyed, the full amount of the assets that are supported, in whole or in part, by the credit enhancement are converted to a credit equivalent amount at 100 percent. However, the *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is assigned to whichever risk category is lower: the risk category appropriate to the obligor, after considering any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation.[41] Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the *pro rata* share of the full amount of the assets supported, in whole or in part, by a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or foreign bank is assigned to the 20 percent risk category.[42]

e. In the case of direct credit substitutes in which a risk participation has been acquired, the acquiring bank's percentage share of the direct credit substitute is multiplied by the full amount of the assets that are supported, in whole or in part, by the credit enhancement and converted to a credit equivalent amount at 100 percent. The credit equivalent amount of an acquisition of a risk participation in a direct credit substitute is assigned to the risk category appropriate to the account party obligor or, if relevant, the nature of the collateral or guarantees.

f. In the case of direct credit substitutes that take the form of a syndication where each bank is obligated only for its *pro rata* share of the risk and there is no recourse to the originating bank, each bank will only include its *pro rata* share of the assets supported, in whole or in part, by the direct credit substitute in its risk-based capital calculation.[43]

* * * * *

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

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

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix A to part 225:

A. The three introductory paragraphs to section II. are revised;

B. A new fifth undesignated paragraph is added to section III.*A*.;

C. In section III.*B*., paragraph 3 is revised and footnote 26 is removed, and in paragraph 4 footnote 27 is removed;

D. In section III.*C*., paragraphs 1 through 3, footnotes 28 through 40 are redesignated as footnotes 26 through 38, and paragraph 4 is revised;

E. In section III.*D*., the introductory paragraph and paragraph 1 are revised; and

F. In section III.*D*. and III.*E*., footnote 50 is removed and footnotes 51 through 57 are redesignated as footnotes 47 through 53.

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

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II. * * *

An institution's qualifying total capital consists of two types of capital components: ''core capital elements'' (comprising Tier 1 capital) and ''supplementary capital elements'' (comprising Tier 2 capital). These capital elements and the various limits, restrictions, and deductions to which they are subject, are discussed below and are set forth in Attachment II.

The Federal Reserve will, on a case-by-case basis, determine whether, and if so how much of, any liability that does not fit wholly within the terms of one of the capital categories set forth below or that does not have an ability to absorb losses commensurate with the capital treatment otherwise specified below will be counted as an element of Tier 1 or Tier 2 capital. In making such a determination, the Federal Reserve will consider the similarity of the liability to liabilities explicitly treated in the guidelines, the ability of the liability to absorb losses while the institution operates as a going concern, the maturity and redemption features of the liability, and other relevant terms and factors. To qualify as an element of Tier 1 or Tier 2 capital, a capital instrument may not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

Redemptions of permanent equity or other capital instruments before stated maturity could have a significant impact on a organization's overall capital structure. Consequently, an organization considering such a step should consult with the Federal Reserve before redeeming any equity or debt capital instrument (prior to maturity) if such redemption could have a material effect on the level or composition of the organization's capital base.[5]

* * * * *

III. * * *

A. * * *

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[38] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made 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.

[39] Forward forward deposits accepted are treated as interest rate contracts.

[40] That is, a participation in which the originating bank remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[41] A risk participation in bankers acceptances conveyed to other institutions is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[42] Risk participations with a remaining maturity of over one year that are conveyed to non-OECD banks are to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

[43] For example, if a bank has a 10 percent share of a $10 syndicated direct credit substitute that provides credit support to a $100 loan, then the bank's $1 *pro rata* share in the enhancement means that a $10 *pro rata* share of the loan is included in risk weighted assets.

[5] Consultation would not ordinarily be necessary if an instrument were redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument and the organization's capital position is considered fully adequate by the Federal Reserve. In the case of limited-life Tier 2 instruments, consultation would generally be obviated if the new security is of equal or greater maturity than the one it replaces.

The Federal Reserve will, on a case-by-case basis, determine the appropriate risk weight for any asset or the credit equivalent amount of an off-balance sheet item that does not fit wholly within the terms of one of the risk weight categories set forth below or that imposes risks on a bank that are incommensurate with the risk weight otherwise specified below for the asset or off-balance sheet item. In addition, the Federal Reserve will, on a case-by-case basis, determine the appropriate credit conversion factor for any off-balance sheet item that does not fit wholly within the terms of one of the credit conversion factors set forth below or that imposes risks on an institution that are incommensurate with the credit conversion factors otherwise specified below for the off-balance sheet item. In making such a determination, the Federal Reserve will consider the similarity of the asset or off-balance sheet item to assets or off-balance sheet items explicitly treated in the guidelines, as well as other relevant factors.

B. * * *

3. *Recourse obligations, direct credit substitutes, and asset-and mortgage-backed securities.* Direct credit substitutes, assets transferred with recourse, and securities issued in connection with asset securitizations and structured financings are treated as described below. Use of the term ''asset securitizations'' or ''securitizations'' in this rule includes structured financings, as well as asset securitization transactions.

a. *Definitions.* (i) *Credit derivatives* are on- or off-balance sheet notes or contracts that allow one party (the ''beneficiary'') to transfer the credit risk of a ''reference asset,'' which it often owns, to another party (the ''guarantor''). The value of a credit derivative is dependent, at least in part, on the credit performance of the reference asset, which typically is a publicly traded loan or corporate bond.

(ii) *Credit-enhancing representations and warranties* means representations and warranties extended by a bank when it transfers assets (including loan servicing assets) or assumed by the bank when it purchases loan servicing assets that obligate the bank to absorb credit losses on transferred assets or serviced loans. These representations and warranties typically arise when the bank agrees to protect purchasers or some other party from losses due to the default or nonperformance of the obligor on the transferred assets or serviced loans, or insufficiency in the value of collateral supporting the transferred assets or serviced loans.

(iii) *Direct credit substitute* means an arrangement in which a banking organization *assumes,* in form or in substance, any risk of credit loss directly or indirectly associated with a *third-party* asset or other financial claim, that exceeds the banking organization's *pro rata* share of the asset or claim. If the banking organization has no claim on the asset, then the assumption of *any* risk of loss is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(*1*) Financial guarantee-type standby letters of credit that support financial claims on the account party;

(*2*) Guarantees, surety arrangements, credit derivatives, and irrevocable guarantee-type instruments backing financial claims such as outstanding securities, loans, or other financial liabilities, or that back off-balance sheet items against which risk-based capital must be maintained;

(*3*) Purchased subordinated interests or securities that absorb more than their pro rata share of losses from the underlying assets;

(*4*) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(*5*) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than mortgage servicer cash advances as defined in paragraph III.*B*.3.a.(vi) of this appendix A), or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the serviced loans.

(iv) *Externally rated* means, with respect to an instrument or obligation, that the instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization.

(v) *Financial guarantee-type standby letter of credit* means any letter of credit or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(*1*) To repay money borrowed by, advanced to, or for the account of, the account party; or

(*2*) To make payment on account of any indebtedness undertaken by the account party in the event that the account party fails to fulfill its obligation to the beneficiary.

(vi) *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if the mortgage servicer is entitled to full reimbursement or, for any one residential mortgage loan, nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal on that loan.

(vii) *Nationally recognized statistical rating organization* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)).

(viii) *Recourse* means an arrangement in which a banking organization *retains,* in form or in substance, any risk of credit loss directly or indirectly associated with a transferred asset that exceeds a *pro rata* share of the banking organization's claim on the asset. If a banking organization has no claim on a transferred asset, then the retention of any risk of loss is recourse. A recourse obligation typically arises when an institution transfers assets and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a banking organization provides credit enhancement beyond any contractual obligation to support assets it has sold. Recourse obligations include, but are not limited to:

(*1*) Credit-enhancing representations and warranties on the transferred assets that obligate the servicer to absorb credit losses, including early-default clauses;

(*2*) Retained loan servicing assets if the servicer is responsible for losses associated with the loans being serviced other than mortgage servicer cash advances as defined in paragraph III.*B*.3.a.(v) of this appendix A.

(*3*) Retained subordinated interests or securities or credit derivatives that absorb more than their pro rata share of losses from the underlying assets;

(*4*) Assets sold under an agreement to repurchase if the assets are not already included on the balance sheet; and

(*5*) Loan strips sold without direct recourse where the maturity of the transferred loan that is drawn is shorter than the maturity of the commitment.

(ix) *Securitization* means the pooling and repackaging of loans or other credit exposures into securities that can be sold to investors. For purposes of this appendix A, securitization also includes structured finance transactions or programs that generally create stratified credit risk positions, whether in the form of a security or not, whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

(x) *Traded position* means a recourse obligation, direct credit substitute, or asset- or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that is rated with a reasonable expectation that, in the near future:

(*1*) The position would be sold to investors relying on the rating; or

(*2*) A third party would, in reliance on the rating, enter into a transaction such as a purchase, loan, or repurchase agreement involving the position.

b. *Amount of position to be included in risk-weighted assets.* Types of recourse obligations or direct credit substitutes, other than those listed in section III.B.3.b.(i)(*1*) through (*7*) of this appendix A, should be treated in accordance with the principles contained in section III.*B*.3 of this appendix A. The treatment of direct credit substitutes that have been syndicated or in which risk participations have been conveyed or acquired is set forth in section III.*D*.1 of this appendix A.

(i) *General rule for determining the credit equivalent amount and risk weight of recourse obligations and direct credit substitutes.* Except as otherwise provided in section III of this appendix A, the risk weighted asset amount or the credit equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed. This credit equivalent amount is

assigned to the risk weight category appropriate to the obligor or, if relevant, the guarantor or nature of any collateral. Thus, a banking organization that extends a partial direct credit substitute, *e.g.,* a financial standby letter of credit, that absorbs the first 10 percent of loss on a transaction, must maintain capital against the full amount of the assets being supported. Furthermore, for direct credit substitutes that are on-balance sheet assets, *e.g.,* purchased subordinated securities, banking organizations must maintain capital against the amount of the direct credit substitutes and the full amount of the assets being supported, *i.e.,* all more senior positions. This treatment is subject to the low-level capital rule discussed in section III.*B*.3.c.(i) of this appendix A. For purposes of this appendix A, the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed means for:

(*1*) A financial guarantee-type standby letter of credit, surety arrangement, credit derivative, guarantee, or irrevocable guarantee-type instruments, the full amount of the assets that the direct credit substitute fully or partially supports;

(*2*) A subordinated interest or security, the amount of the subordinated interest or security plus all more senior interests or securities;

(*3*) Mortgage servicing assets that are recourse obligations or direct credit substitutes, the outstanding amount of the loans serviced;

(*4*) Credit-enhancing representations and warranties, the amount of the assets subject to the representations or warranties;

(*5*) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party, the full amount of the enhanced financial obligations;

(*6*) Loans strips, the amount of the loans; and

(*7*) For assets sold with recourse, the amount of assets for which risk of loss is directly or indirectly retained, less any applicable recourse liability account established in accordance with generally accepted accounting principles.

(ii) *Determining the credit risk weight of recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities that are rated within one of the five highest rating categories.* (*1*) A traded position is eligible for the risk-based capital treatment described in this paragraph if its external rating is within one of the five highest rating categories, *e.g.* AAA through BB, used by a nationally-recognized statistical rating organization. A recourse obligation, direct credit substitute, or asset- or mortgage-backed security which is not externally rated but is senior in all respects to a traded position that is externally rated, including access to any collateral, is also eligible for the risk-based capital treatment described in this paragraph III.*B*.3.b.(ii) as if it had the same rating as the traded position. This treatment for the unrated senior position is subject to current and prospective supervisory guidance on a case-by-case basis.

(*A*) *Two highest investment grades.* Except as otherwise provided in this section III. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in either of two highest investment grade categories, *e.g.,* AAA or AA, is assigned to the 20 percent risk category.

(*B*) *Third highest investment grade.* Except as otherwise provided in this section III. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in the third highest investment grade category, *e.g.,* A, is assigned to the 50 percent risk category.

(*C*) *Lowest investment grade.* Except as otherwise provided in this section III. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in the lowest investment grade category, *e.g.,* BBB, is assigned to the 100 percent risk category.

(*D*) *One category below investment grade.* Except as otherwise provided in this section III. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in the next lower category below the lowest investment grade category, *e.g.,* BB, is assigned to the 200 percent risk category.

(*2*) Nontraded recourse obligations, direct credit substitutes, or asset- or mortgage-backed securities that are retained, assumed, or issued in connection with an asset securitization are also eligible for the treatment described in this paragraph III.*B*.3.b.(ii) if they are externally rated within one of the five highest rating categories by two nationally-recognized statistical rating organizations, the ratings are publicly available, and the ratings are based on the same criteria used to rate securities sold to the public.

(*3*) A direct credit substitute extended in connection with an asset securitization that is not a traded position and is not externally rated by a nationally-recognized statistical rating organization (such as a letter of credit) may be eligible for the treatment described in paragraph III.*B*.3.b.ii(1)(*C*) and (*D*), *i.e., a minimum risk weight of 100 percent,* if it satisfies the criteria of one of the following approaches deemed appropriate for the organization by the Federal Reserve:

(*A*) A banking organization, under its qualifying internal risk rating system, assigns an internal rating to a direct credit substitute extended to an asset-backed commercial paper program that is equivalent to an external credit rating one category below investment grade or higher provided by a nationally recognized statistical rating organization. A qualifying internal risk rating system must be reviewed and deemed appropriate by the Federal Reserve and must satisfy the following criteria and any other prudential standards that the Federal Reserve determines are necessary. Qualifying internal risk rating systems at a minimum must:

(*i*) Be an integral part of an effective risk management system that explicitly incorporates the full range of risks arising from a banking organization's participation in securitization activities;

(*ii*) Link the internal ratings to measurable outcomes, such as the probability that the position will experience any loss, the position's expected loss given default, and the degree of variance in losses given default on that position;

(*iii*) Separately consider the risk associated with the underlying loans or borrowers, and the risk associated with the structure of a particular securitization transaction;

(*iv*) Identify gradations of risk among ''pass'' assets and other risk positions;

(*v*) Have clear, explicit criteria that are used to classify assets into each internal risk grade, including subjective factors;

(*vi*) Have independent credit risk management or loan review personnel assigning or reviewing the credit risk ratings;

(*vii*) Have an internal audit procedure that periodically verifies that the internal credit risk ratings are assigned in accordance with the established criteria;

(*viii*) Monitor the performance of the internal ratings assigned to nonrated nontraded direct credit substitutes over time to determine the appropriateness of the initial rating assignment and adjust individual ratings accordingly; and,

(*ix*) Be consistent with, or more conservative than, the rating assumptions and methodologies of nationally recognized statistical rating organizations.

(*B*) A banking organization's direct credit substitute extended to a securitization or structured finance program is reviewed by a nationally recognized statistical rating organization, in conjunction with a review of the overall program, and is assigned a rating or its equivalent. If the program has options for different combinations of assets, standards, internal credit enhancements, and other relevant factors, the rating organization may specify ranges of rating categories that may apply premised on which options are utilized by the bank's risk position. The banking organization must demonstrate to the Federal Reserve that the nationally recognized statistical rating organization's programmatic rating for its risk position generally meets the same standards used by the rating organization for rating traded positions, and that the rating organization's underlying premises are satisfied for particular direct credit substitutes issued by the institution. If a banking organization participates in a securitization or structured finance program sponsored by another party, the Federal Reserve may authorize the institution to use this approach based on a programmatic rating obtained by the sponsor of the program.

(*C*) An institution may rate its credit risk exposure to direct credit substitutes by relying on a qualifying credit assessment computer program. A nationally recognized statistical rating agency or other acceptable third party must have developed such a credit assessment system for determining the credit risk of direct credit substitutes and other stratified credit positions. Institutions must demonstrate to the Federal Reserve that ratings under such a credit assessment computer program correspond credibly and reliably with the ratings assigned by the rating agencies to publicly traded securities.

(iii) *Determining the credit risk weight for off-balance sheet securitized assets that are subject to early amortization provisions.* If a

bank securitizes revolving assets, such as credit cards, home equity lines, or commercial loans issued under lines of credit, in a securitization transaction that it has sponsored and which includes early amortization provisions, then the sponsoring bank must maintain risk-based capital against the off-balance sheet securitized assets from the inception of the transaction. An early amortization feature is a provision that, under specified conditions, returns principal to investors prior to the expected payment dates and generally is a result of a deteriorating portfolio. The securitized, off-balance sheet assets are to be converted to an on-balance sheet credit equivalent amount using the 100 percent conversion factor and assigned to the 20 percent risk category. However, this capital requirement, when conbined with the capital requirements for any retained recourse or direct credit substitute associated with the securitized assets, is limited to a toal of 8 percent of the off-balance sheet securitized assets.

c. *Limitations on risk-based capital requirements.* (i) *Low-level exposure.* If the maximum contractual liability or exposure to loss retained or assumed by a banking organization in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual liability or exposure to loss, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply to assets sold with implicit recourse.

(ii) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a banking organization holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the banking organization continued to hold these loans as an on-balance sheet asset.

(iii) *Related on-balance sheet assets.* If a recourse obligation or direct credit substitute subject to section III.*B.*3. of this appendix A also appears as a balance sheet asset, the balance sheet asset is not included in a banking organization's risk-weighted assets to the extent the value of the balance sheet asset is already included in the off-balance sheet credit equivalent amount for the recourse obligation or direct credit substitute, except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In the latter cases, both the on-balance sheet assets and the related recourse obligations and direct credit substitutes are incorporated into the risk-based capital calculation.

* * * * *

C. * * *

4. *Category 4: 100 percent.* a. All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

b. This category includes long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk.[39] This category includes all claims on foreign and domestic private-sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims;[40] investments in fixed assets, premises, and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; all stripped mortgage-backed securities and similar instruments; and commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans secured by residential property that qualify for a lower risk weight).

c. Also included in this category are industrial-development bonds and similar obligations issued under the auspices of state or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest, and all obligations of states or political subdivisions of countries that do not belong to the OECD-based group.

d. The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including those that may have been grandfathered into capital.

D. * * *

The face amount of an off-balance sheet item is generally incorporated into risk-weighted assets in two steps. The face amount is first multiplied by a credit conversion factor, except for direct credit substitutes and recourse obligations as discussed in section III.*D.*1. of this appendix A. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.[41] Attachment IV to this appendix A sets forth the conversion factors for various types of off-balance sheet items.

1. *Items with a 100 percent conversion factor.* a. Except as otherwise provided in section III.*B.*3. of this appendix A, the full amount of an asset or transaction supported, in whole or in part, by a direct credit substitute or a recourse obligation. Direct credit substitutes and recourse obligations are defined in section III.*B.*3. of this appendix A. b. Sale and repurchase agreements and forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with certain drawdown at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[42] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

c. Securities lent by a banking organization are treated in one of two ways, depending upon whether the lender is at risk of loss. If a banking organization, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the transaction is excluded from the risk-based capital calculation. If, alternatively, a banking organization lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor, or if applicable to any collateral delivered to the lending bank, or, the independent custodian acting on the lending banking organization's behalf. Where a banking organization is acting as agent for a customer in a transaction involving the lending or sale of securities that is collateralized by cash delivered to the banking organization, the transaction is deemed to be collateralized by cash on deposit in the banking organization for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities and the cash collateral received and any reinvestment risk associated with that cash collateral is borne by the customer.

d. In the case of direct credit substitutes in which a risk participation[43] has been conveyed, the full amount of the assets that

[39] Such assets include all nonlocal currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by subsidiary depository institutions.

[40] Customer liabilities on acceptances outstanding involving nonstandard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

[41] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral of the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made 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.

[42] Forward forward deposits accepted are treated as interest rate contracts.

[43] That is, a participation in which the originating banking organization remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

are supported, in whole or in part, by the credit enhancement are converted to a credit equivalent amount at 100 percent. However, the *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is assigned to whichever risk category is lower: the risk category appropriate to the obligor, after considering any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation.[44] Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the *pro rata* share of the full amount of the assets supported, in whole or in part, by a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or foreign bank is assigned to the 20 percent risk category.[45]

e. In the case of direct credit substitutes in which a risk participation has been acquired, the acquiring banking organization's percentage share of the direct credit substitute is multiplied by the full amount of the assets that are supported, in whole or in part, by the credit enhancement and converted to a credit equivalent amount at 100 percent. The credit equivalent amount of an acquisition of a risk participation in a direct credit substitute is assigned to the risk category appropriate to the account party obligor or, if relevant, the nature of the collateral or guarantees.

f. In the case of direct credit substitutes that take the form of a syndication where each banking organization is obligated only for its *pro rata* share of the risk and there is no recourse to the originating banking organization, each banking organization will only include its *pro rata* share of the assets supported, in whole or in part, by the direct credit substitute in its risk-based capital calculation.[46]

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 10, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

[44] A risk participation in bankers acceptances conveyed to other institutions is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[45] Risk participations with a remaining maturity of over one year that are conveyed to non-OECD banks are to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

[46] For example, if a banking organization has a 10 percent share of a $10 syndicated direct credit substitute that provides credit support to a $100 loan, then the banking organization's $1 *pro rata* share in the enhancement means that a $10 *pro rata* share of the loan is included in risk weighted assets.

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. In appendix A to part 325, section II:

A. In paragraph A., the first two undesignated paragraphs are designated 1. and 2. respectively;

B. A new paragraph A.3. is added;

C. Paragraph B. is amended by revising paragraph B.5.;

D. In paragraph C., Category 1—Zero Percent Risk Weight through Category 3—50 Percent Risk Weight, footnotes 15 through 31 are redesignated as footnotes 19 through 34;

E. In paragraph C., Category 2—20 Percent Risk Weight, the three undesignated paragraphs are designated as paragraphs a. through c., respectively, and a new paragraph d. is added;

F. In paragraph C., Category 3—50 Percent Risk Weight, the third undesignated paragraph is removed and the remaining three undesignated paragraphs are designated as paragraphs a. through c., respectively;

G. In paragraph C., Category 3—50 Percent Risk Weight, newly designated footnote 32 is revised;

H. In paragraph C., Category 4—100 Percent Risk Weight is revised;

I. In paragraph C., following the paragraph titled Category 4—100 Percent Risk Weight, a new paragraph titled Category 5—200 Percent Risk Weight is added;

J. In paragraph D., the undesignated introductory paragraph is revised;

K. Paragraph D.1. is revised;

L. In paragraph D.2., footnote 38 is removed; and

M. In paragraphs D.2. and E., footnotes 39 through 42 are redisignated as footnotes 38 through 41.

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

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II. * * *

A. * * *

3. The Director of the Division of Supervision may, on a case-by-case basis, determine the appropriate risk weight for any asset or credit equivalent amount that does not fit wholly within one of the risk categories set forth below or that imposes risks on a bank that are not commensurate with the risk weight otherwise specified below for the asset or credit equivalent amount. In addition, the Director of the Division of Supervision may, on a case-by-case basis, determine the appropriate credit conversion factor for any off-balance sheet item that does not fit wholly within one of the credit conversion factors set forth below or that imposes risks on a bank that are not commensurate with the credit conversion factor otherwise specified below for the off-balance sheet item. In making such a determination, the Director of the Division of Supervision will consider the similarity of the asset or off-balance sheet item to assets or off-balance sheet items explicitly treated in the guidelines, as well as other relevant factors.

B. * * *

5. *Recourse obligations, direct credit substitutes, and asset-and mortgage-backed securities.* Direct credit substitutes, assets sold with recourse, and securities issued in connection with asset securitizations are treated as described below.

(a) *Definitions.* (i) *Credit derivative* means an on-or off-balance sheet note or contract that allows one party (the ''beneficiary'') to transfer the credit risk of a ''reference asset,'' which the beneficiary often owns, to another party (the ''guarantor''). The value of a credit derivative is dependent, at least in part, on the credit performance of the reference asset, which typically is a publicly traded loan or corporate bond.

(ii) *Credit-enhancing representations and warranties* means representations and warranties, extended by a bank when it transfers assets (including loan servicing assets) or assumed by the bank when it purchases loan servicing assets, that obligate the bank to protect another party from losses due to credit risk in the transferred assets or serviced loans. These representations and warranties typically arise when the bank agrees to protect purchasers or some other party from losses due to:

(*1*) The default or nonperformance of the obligor on the transferred assets or serviced loans; or

(*2*) Insufficiency in the value of collateral supporting the transferred assets or serviced loans.

(iii) *Direct credit substitute* means an arrangement in which a bank *assumes,* in form or in substance, any risk of credit loss directly or indirectly associated with a *third-party* asset or other financial claim, that exceeds the bank's *pro rata* share of the asset or claim. If the bank has no claim on the asset, then the assumption of *any* risk of loss is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(*1*) Financial standby letters of credit, which includes any letter of credit or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(*a*) To repay money borrowed by, advanced to, or for the account of, the account party, or

(*b*) To make payment on account of any indebtedness undertaken by the account party in the event that the account party fails to fulfill its obligation to the beneficiary.

(*2*) Guarantees, surety arrangements, credit derivatives, and irrevocable guarantee-type

instruments backing financial claims such as outstanding securities, loans, or other financial claims, or that back off-balance-sheet items against which risk-based capital must be maintained;

(*3*) Purchased subordinated interests or securities that absorb more than their pro rata share of credit losses from the underlying assets;

(*4*) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(*5*) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than mortgage servicer cash advances as defined in paragraph B.5(a)(vi) of this section), or if the servicer makes or assumes credit-enhancing representations and warranties on the serviced loans.

(iv) *Externally rated* means, with respect to an instrument or obligation, that the instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization.

(v) *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

(vi) *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection, so long as the mortgage servicer is entitled to full reimbursement or nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal for any one residential mortgage loan, and the servicer's entitlement to reimbursement is not subordinated.

(vii) *Nationally recognized statistical rating organization* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)).

(viii) *Recourse* means an arrangement in which a bank *retains*, in form or in substance, any risk of credit loss directly or indirectly associated with an asset it has transferred and sold that exceeds a *pro rata* share of the bank's claim on the asset. If a bank has no claim on an asset it has transferred and sold, then the retention of any risk of credit loss is recourse. A recourse obligation typically arises when an institution transfers assets in a sale and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. Recourse obligations include, but are not limited to:

(*1*) Credit-enhancing representations and warranties on the transferred assets;

(*2*) Retained loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (including credit-enhancing representations and warranties), other than mortgage servicer cash advances as defined in paragraph B.5(a)(vi) of this section;

(*3*) Retained subordinated interests or securities, or credit derivatives that absorb more than their *pro rata* share of credit losses from the underlying assets;

(*4*) Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet; and

(*5*) Loan strips sold without direct recourse where the maturity of the transferred loan that is drawn is shorter than the maturity of the commitment.

(ix) *Securitization* means the pooling and repackaging of loans or other credit exposures into securities that can be sold to investors. For purposes of this section II.B.5, *securitization* also includes transactions or programs that generally create stratified credit risk positions, whether in the form of a security or not, whose performance is dependent upon an underlying pool of loans or other credit exposures.

(x) *Traded position* means a recourse obligation, direct credit substitute, or asset-or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that is externally rated with a reasonable expectation that, in the near future:

(*1*) The position would be sold to investors relying on the external rating; or

(*2*) A third party would, in reliance on the external rating, enter into a transaction such as a purchase, loan, or repurchase agreement involving the position.

(b) *Amount of position to be included in risk-weighted assets*—(i) *General rule for determining the credit equivalent amount and risk weight of recourse obligations and direct credit substitutes.* Except as otherwise provided in this section II.B. of this appendix A, the credit equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed by the bank. This credit equivalent amount is assigned to the risk category appropriate to the obligor, or if relevant, the guarantor or nature of any collateral. Thus, a bank that extends a partial direct credit substitute, *e.g.,* a financial standby letter of credit that absorbs the first 10 percent of loss on a transaction, must maintain capital against the full amount of the assets being supported. Furthermore, for a direct credit substitute that is an on-balance sheet asset, *e.g.,* a purchased subordinated security, a bank must maintain capital against the amount of the direct credit substitute and the full amount of the assets being supported, *i.e.,* all more senior positions. This treatment is subject to the low-level exposure rule discussed in section II.B.5(c)(i) of this appendix A. For purposes of this appendix A, the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed means for:

(*1*) A financial standby letter of credit, surety arrangement, credit derivative, guarantee, or irrevocable guarantee-type instrument, the full amount of the assets that the direct credit substitute fully or partially supports;

(*2*) A subordinated interest or security, the amount of the subordinated interest or security plus all more senior interests or securities;

(*3*) Loan servicing assets that are recourse obligations or direct credit substitutes, the outstanding amount of the loans serviced;

(*4*) Credit-enhancing representations and warranties, the amount of the assets subject to the representations or warranties;

(*5*) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party, the full amount of the enhanced financial obligations;

(*6*) Loans strips, the amount of the loans sold; and

(*7*) Assets sold with recourse, the full amount of the assets from which risk of credit loss is directly or indirectly retained, less any applicable recourse liability account established in accordance with generally accepted accounting principles.

(ii) *Participations in and syndications of direct credit substitutes.* Subject to the low-level exposure rule discussed in section II.B.5(c)(i) of this appendix A:

(*1*) In the case of a direct credit substitute in which the bank has conveyed a risk participation,[14] the full amount of the assets that are supported, in whole or in part, by the direct credit substitute are converted to a credit equivalent amount at 100 percent. However, the *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is assigned to whichever risk category is lower: The risk category appropriate to the obligor, after considering any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation.[15] Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the *pro rata* share of the full amount of the assets supported, in whole or in part, by a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or an OECD bank is assigned to the 20 percent risk category.[16]

(*2*) In the case of a direct credit substitute in which the bank has acquired a risk participation, the acquiring bank's percentage share of the direct credit substitute is multiplied by the full amount of the assets that are supported, in whole or in part, by the direct credit substitute and converted to a credit equivalent amount at 100 percent. The resulting credit equivalent amount is

[14] That is, a participation in which the originating bank remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[15] A risk participation in a bankers acceptance conveyed to another institution is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[16] A risk participation with a remaining maturity of one year or less that is conveyed to a non-OECD bank is also assigned to the 20 percent risk category.

assigned to the risk category appropriate to the account party obligor, guarantor, or collateral.

(*3*) In the case of a direct credit substitute that takes the form of a syndication where each bank is obligated only for its *pro rata* share of the risk and there is no recourse to the originating bank, each bank's credit equivalent amount will be only its *pro rata* share of the assets supported, in whole or in part, by the direct credit substitute. The resulting credit equivalent amount is assigned to the risk category appropriate to the obligor, guarantor, or collateral. [17]

(iii) *Face-amount treatment for externally rated recourse obligations, direct credit substitutes, and asset-and mortgage-backed securities.* (*1*) A traded position is eligible for the risk-based capital treatment described in this paragraph II.B.5(b)(iii) if its external rating is within one of the five highest rating categories, *e.g.,* AAA through BB, used by a nationally-recognized statistical rating organization.

(*a*) *Two highest investment grades.* The face amount of a recourse obligation, direct credit substitute, or an asset-or mortgage-backed security that is rated in either of the two highest investment grade categories, *e.g.,* AAA or AA, is assigned to the 20 percent risk category.

(*b*) *Third highest investment grade.* The face amount of a recourse obligation, direct credit substitute, or an asset-or mortgage-backed security that is rated in the third highest investment grade category, *e.g.,* A, is assigned to the 50 percent risk category.

(*c*) *Lowest investment grade.* The face amount of a recourse obligation, direct credit substitute, or an asset-or mortgage-backed security that is rated in the lowest investment grade category, *e.g.,* BBB, is assigned to the 100 percent risk category.

(*d*) *One category below investment grade.* The face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in the next lower category below the lowest investment grade category, *e.g.,* BB, is assigned to the 200 percent risk category.

(*2*) Other recourse obligations and direct credit substitutes that are retained, assumed, or issued in connection with an asset securitization are also eligible for the risk-based capital treatment described in this paragraph II.B.5(b)(iii) if they are externally rated by two nationally-rated statistical rating organizations as falling within one of the five highest rating categories used by the organizations, the ratings are publicly available, and the ratings are based on the same criteria used to rate traded positions.[18] If the two ratings differ, the lower rating will determine the risk category to which the recourse obligation or direct credit substitute will be assigned.

(*3*) Stripped mortgage-backed securities (such as interest-only or principal-only strips) may not be assigned to the 20 percent or 50 percent risk category under section II.B.5(b)(iii)(1)(a)–(b) of this appendix A.

(*4*) A position which is not externally rated but is senior in all respects to a traded position eligible for the risk-based capital treatment described in section II.B.5(b)(iii)(*1*) of this appendix A, including access to any collateral, will be eligible for the risk-based capital treatment described in this paragraph II.B.5(b)(iii) as if it had the same rating as the traded position, if the bank can demonstrate to the FDIC's satisfaction that such treatment is appropriate.

(iv) *Face-amount treatment for direct credit substitutes which are not externally rated.* A direct credit substitute assumed or issued in connection with an asset securitization which does not qualify for face amount treatment under section II.B.5(b)(iii) of this appendix A because it is not externally rated may still qualify for face amount treatment, if the bank determines that the credit risk of the direct credit substitute is equivalent to or better than the external rating category set out at section II.B.5(b)(iii)(*1*)(*d*) of this appendix A (*e.g.,* BB). The face amount of a position which the bank determines is equivalent to or better than the external rating category set out at section II.B.5(b)(iii)(*1*)(*c*) of this appendix A (*e.g.,* BBB) must be assigned to the 100 percent risk category, and a position equivalent to the external rating category set out in section II.B.5(b)(iii)(*1*)(*d*) of this appendix A (*e.g.,* BB) must be assigned to the 200 percent risk category. The bank's determination may only be made pursuant to the following three approaches, the use of which must be satisfactory to the FDIC:

(*1*) *Internal risk ratings for asset-backed commercial paper programs.* A bank, under its internal risk rating system, assigns an internal rating to a direct credit substitute the bank extends to the asset-backed commercial paper program it sponsors, and the rating is equivalent to or better than the rating category set out at section B.5(b)(iii)(*1*)(*d*) of this appendix A (*e.g.,* BB). The internal risk rating system must be satisfactory to the FDIC and must be prudent and appropriate for the size and complexity of the bank's program. Adequate internal risk rating systems typically:

(*a*) are an integral part of an effective risk management system that explicitly incorporates the full range of risks arising from a bank's participation in securitization activities;

(*b*) link the internal ratings to measurable outcomes, such as the probability that the position will experience any loss, the position's expected loss given default, and the degree of variance in losses given default on that position;

(*c*) separately consider the risk associated with the underlying loans or borrowers and the risk associated with the structure of a particular securitization transaction;

(*d*) identify gradations of risk among ''pass'' assets and other risk positions;

(*e*) have clear, explicit criteria that are used to classify assets into each internal risk grade, including criteria for subjective factors;

(*f*) have independent credit risk management or loan review personnel with adequate training assigning or reviewing the credit risk ratings, subject to internal audit review to verify that ratings are assigned in accordance with the bank's criteria;

(*g*) track the performance of the internal ratings over time and make adjustments to the ratings system when the performance of rated positions has a tendency to diverge from assigned ratings, and adjust individual ratings accordingly; and,

(*h*) are consistent with, or more conservative than, the rating assumptions and methodologies of nationally recognized statistical rating organizations.

(*2*) *Program ratings.* If a nationally recognized statistical rating organization or other entity satisfactory to the FDIC has reviewed the terms of a securitization program and stated a rating for direct credit substitutes to be issued under the program equivalent to or better than the external rating category set out at section II.B.5(b)(iii)(*1*)(*d*) of this appendix A (*e.g.,* BB), a bank may use such a rating for a direct credit substitute the bank issues under the program. If the program has options for different combinations of assets, standards, internal credit enhancements, and other relevant factors, the rating organization or other entity may specify ranges of rating categories that will apply premised on which options correspond to the bank's position. The bank must demonstrate to the FDIC's satisfaction that the program rating meets the same standards generally used by nationally recognized statistical rating organizations for rating traded positions, and that the rating organization's or other entity's underlying premises are satisfied for the particular direct credit substitute issued by the bank.

(*3*) *Credit assessment computer program.* A bank may use an acceptable credit assessment computer program to determine that a direct credit substitute is equivalent to or better than the external rating category set out at section II.B.5(b)(iii)(*1*)(*d*) of this appendix A (*e.g.,* BB). A nationally recognized statistical rating organization or other party satisfactory to the FDIC must have developed the credit assessment system for determining the credit risk of direct credit substitutes and other stratified credit positions. The bank must demonstrate to the FDIC's satisfaction that ratings under such a credit assessment computer program correspond credibly and reliably with the rating of traded positions.

(v) *Determining the credit risk weight for off-balance sheet securitized assets that are subject to early amortization provisions.* If a bank securitizes revolving assets, such as credit cards, home equity lines, or commercial lines of credit, in a transaction that it has sponsored and which includes early amortization provisions, then the bank must maintain risk-based capital against the off-balance sheet securitized assets from the inception of the transaction. An early amortization feature is a provision that, under specified conditions, returns principal to investors prior to the expected payment

[17] For example, if a bank has a 10 percent share of a $10 syndicated direct credit substitute that provides credit support to a $100 loan to a private obligor, then the bank's $1 *pro rata* share in the enhancement means that a $10 *pro rata* share of the loan is included in the bank's risk weighted assets.

[18] The bank must demonstrate to the FDIC's satisfaction that the ratings are based on the same criteria that the ratings organizations use to rate traded positions.

dates, generally as a result of a deterioration in the portfolio of securitized revolving assets. The securitized, off-balance sheet assets are to be converted to an on-balance sheet credit equivalent amount using the 100 percent conversion factor and the resulting amount is to be assigned to the 20 percent risk category. However, this capital requirement, when combined with the capital requirements for any retained recourse or direct credit substitute associated with the securitized assets, is limited to a total of 8 percent of the managed assets.

(c) *Limitations on risk-based capital requirements*—(i) *Low-level exposure.* If the maximum contractual liability or exposure to loss retained or assumed by a bank in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual liability or exposure to loss, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply to assets sold with implicit recourse.

(ii) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a bank holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the bank continued to hold these loans as an on-balance sheet asset.

(iii) *Related on-balance sheet assets.* If a recourse obligation or direct credit substitute subject to paragraph B.5. of this section also appears as a balance sheet asset, the balance sheet asset is not included in a bank's risk-weighted assets to the extent the value of the balance-sheet asset is already included in the credit equivalent amount for the recourse obligation or direct credit substitute, except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In such a case, both the on-balance sheet servicing assets and the related recourse obligations or direct credit substitutes are incorporated into the risk-based capital calculation.

* * * * *

C. * * *

Category 2—20 Percent Risk Weight.

* * * * *

d. This category also includes the credit equivalent amount of off-balance sheet securitized revolving assets in transactions which include early amortization provisions that were sponsored by the bank.

Category 3—50 Percent Risk Weight.

* * * * *

b. * * *[32] * * *

* * * * *

[32] The types of loans that qualify as loans secured by multifamily residential properties are listed in the instructions for preparation of the Consolidated Reports of Condition and Income. In addition, from the standpoint of the selling bank, when a multifamily residential property loan is sold subject to a *pro rata* loss sharing arrangement which provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank, that portion of the loan is not subject to the risk-based capital standards. In connection with sales of multifamily residential property loans in which the purchaser of the loan shares in any loss incurred on the loan with the selling institution on other than a *pro rata* basis, the selling bank must treat these other loss sharing arrangements in accordance with section II.B.5. of this appendix A.

Category 4—100 Percent Risk Weight. (a) All assets not included in the categories above, except the assets specifically included in the 200 percent category below, are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

(b) This category includes:

(1) Long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk; [35]

(2) All claims on foreign and domestic private-sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies);

(3) Claims on commercial firms owned by the public sector;

(4) Customer liabilities to the bank on acceptances outstanding involving standard risk claims; [36]

(5) Investments in fixed assets, premises, and other real estate owned;

(6) Common and preferred stock of corporations, including stock acquired for debts previously contracted;

(7) Commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans secured by residential property that qualify for a lower risk weight);

(8) Mortgage- and asset-backed securities that do not meet the criteria for assignment to a lower risk category;

(9) Industrial-development bonds and similar obligations issued under the auspices of states or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest; and

[35] Such assets include all nonlocal currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by the bank.

[36] Customer liabilities on acceptances outstanding involving nonstandard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

(10) All obligations of states or political subdivisions of countries that do not belong to the OECD-based group.

(c) The following assets also are assigned a risk weight of 100 percent if they have not already been deducted from capital: investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banks; deferred tax assets; and mortgage servicing assets, nonmortgage servicing assets, and other allowed intangibles.

Category 5—200 Percent Risk Weight. This category includes:

(a) The face amount of externally rated recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities that are rated in the next lower category below the lowest investment grade category, *e.g.,* BB, to the extent permitted in section II.B.5(b)(iii) of this appendix A; and

(b) The face amount of direct credit substitutes for which the bank determines that the credit risk is equivalent to one category below investment grade, *e.g.,* BB, to the extent permitted in section II.B.5.(b)(iii) of this appendix A.

D. * * *

The face amount of an off-balance sheet item is generally incorporated into the risk-weighted assets in two steps. The face amount is first multiplied by a credit conversion factor, except for direct credit substitutes and recourse obligations as discussed in section II.B.5. of this appendix A. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.[37] Table III to this appendix A sets forth the conversion factors for various types of off-balance-sheet items.

1. Items with a 100 percent conversion factor. (a) Except as otherwise provided in section II.B.5. of this appendix A, the full amount of an asset or transaction supported, in whole or in part, by a direct credit substitute or a recourse obligation. Direct credit substitutes and recourse obligations are defined in section II.B.5. of this appendix A.

(b) Sale and repurchase agreements, if not already included on the balance sheet, and forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with drawdown which is certain at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[38] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

(c) Securities lent by a bank are treated in one of two ways, depending upon whether

[37] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section II.B. of this appendix A.

[38] Forward forward deposits accepted are treated as interest rate contracts.

the lender is exposed to risk of loss. If a bank, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the securities transaction is excluded from the risk-based capital calculation. On the other hand, if a bank lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor or, if applicable, to the collateral delivered to the lending bank or the independent custodian acting on the lending bank's behalf.

* * * * *

3. In the tables at the end of appendix A to part 325, Table II.—Summary of Risk Weights and Risk Categories:

A. In Category 2—20 Percent Risk Weight, paragraph (11) is removed, paragraph (12) is redesignated as paragraph (11), and new paragraphs (12) and (13) are added;

B. In Category 3—50 Percent Risk Weight, paragraph (3) is revised;

C. In Category 4—100 Percent Risk Weight, paragraph (9) is revised and a new paragraph (10) is added; and

D. Following the paragraph titled Category 4—100 Percent Risk Weight, a new paragraph titled, Category 5—200 Percent Risk Weight, is added to read as follows:

* * * * *

Table II.—Summary of Risk Weights and Risk Categories.

* * * * *

Category 2—20 Percent Risk Weight.

* * * * *

(12) Asset- or mortgage-backed securities (or recourse obligations or direct credit substitutes issued in connection with such securitizations) rated in either of the two highest investment grade categories, *e.g.,* AAA or AA.

(13) The credit equivalent amount of off-balance sheet revolving assets in securitization transactions featuring early amortization provisions sponsored by the bank.

Category 3—50 Percent Risk Weight.

* * * * *

(3) Asset- or mortgage-backed securities (or recourse obligations or direct credit substitutes issued in connection with such securitizations) rated in the third-highest investment grade category, *e.g.,* A.

* * * * *

Category 4—100 Percent Risk Weight.

* * * * *

(9) Asset- or mortgage-backed securities (or recourse obligations or direct credit substitutes issued in connection with such securitizations) rated in the lowest investment grade category, *e.g.,* BBB, as well as certain direct credit substitutes which the bank rates as the equivalent of the lowest investment grade category, *e.g.,* BBB, or above through an internal assessment satisfactory to the FDIC.

(10) All other assets, including any intangible assets that are not deducted from capital, and the credit equivalent amounts [4] of off-balance sheet items not assigned to a different risk category.

Category 5—200 Percent Risk Weight.

Asset- or mortgage-backed securities (or recourse obligations or direct credit substitutes issued in connection with such securitizations) rated one category below investment grade, *e.g.,* BB, as well as certain direct credit substitutes which the bank rates as the equivalent of one category below investment grade, *e.g.,* BB, through an internal assessment satisfactory to the FDIC.

4. In the tables at the end of appendix A to part 325, Table III.—Credit Conversion Factors for Off-Balance Sheet Items:

A. In this table, references to footnote 1 are removed each time they appear and footnote 1 is removed.

B. In 100 Percent Conversion Factor, paragraphs (1) through (3) are revised, and a new paragraph (6) is added, to read as follows:

Table III.—Credit Conversion Factors for Off-Balance Sheet Items.

100 Percent Conversion Factor.

(1) The full amount of assets supported by direct credit substitutes or recourse obligations (unless a different treatment is otherwise specified). For risk participations in such arrangements and acquired by the bank, the full amount of assets supported by the main obligation multiplied by the acquiring bank's percentage share of the risk participation.

(2) Acquisitions of risk participations in bankers acceptances.

(3) Sale and repurchase agreements, if not already included on the balance sheet.

* * * * *

(6) Off-balance sheet revolving assets in securitization transactions featuring early amortization provisions sponsored by the bank.

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC this 9th day of February, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by revising the definitions of direct credit substitute and recourse and adding definitions of covered representations and warranties, credit derivative, financial guarantee-type standby letter of credit, nationally recognized statistical rating organization, performance-based standby letter of credit, rated, securitization, servicer cash advance, standby letter of credit and traded position, to read as follows:

§ 567.1 Definitions.

* * * * *

Covered representations and warranties. The term *covered representations and warranties* means representations and warranties extended by a savings association when it transfers assets (including loan servicing assets) or assumed by a savings association when it purchases loan servicing assets, that obligate the savings association to protect another party from losses due to credit risk in the transferred assets or serviced loans.

Credit derivative. The term *credit derivative* means on- or off-balance sheet notes or contracts that allow one party to transfer the credit risk of a referenced asset, that it may own, to another party. The value of a credit derivative is dependent, at least in part, on the credit performance of the referenced asset.

* * * * *

Direct credit substitute. The term *direct credit substitute* means an arrangement in which a savings association assumes, in form or in substance, any risk of credit loss directly or indirectly associated with an asset or other financial claim owned in whole or in part by another party, that exceeds the association's *pro rata* share of the asset or claim. If the savings association has no claim on the asset, then the assumption of any risk of loss is a direct credit substitute. Direct credit substitutes include:

(1) Financial guarantee-type standby letters of credit that support financial claims on the account party;

(2) Guarantees, surety arrangements, credit derivatives, and irrevocable guarantee-type instruments backing financial claims;

(3) Purchased subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

[4] For each off-balance sheet item, a conversion factor (see Table III) must be applied to determine the ''credit equivalent amount'' prior to assigning the off-balance sheet time to a risk weight category.

(4) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(5) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than a servicer cash advance), or if the servicer makes or assumes covered representations and warranties with respect to such loans.

* * * * *

Financial guarantee-type standby letter of credit. The term *financial guarantee-type standby letter of credit* means any letter of credit or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by, advanced to, or for the account of, the account party; or

(2) To make payment on account of any indebtedness undertaken by the account party in the event that the account party fails to fulfill its obligation to the beneficiary.

* * * * *

Nationally recognized statistical rating organization. The term *nationally recognized statistical rating organization* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for various purposes, including the uniform net capital regulations for broker-dealers.

* * * * *

Performance-based standby letter of credit. The term *performance-based standby letter of credit* means any letter of credit, or similar arrangement, however named or described, which represents an irrevocable obligation to the beneficiary on the part of the issuer to make payment on account of any default by a third party in the performance of a nonfinancial or commercial obligation. Such letters of credit include arrangements backing subcontractors' and suppliers' performance, labor and materials contracts, and construction bids.

* * * * *

Rated. The term *rated* means, with respect to an instrument or obligation, that the instrument or obligation has received a credit rating from a nationally recognized statistical rating organization. An instrument or obligation is rated investment grade if it has received a credit rating that falls within one of the four highest rating categories used by the organization. An instrument or obligation is rated in the highest investment grade if it has received a credit rating that falls within the highest rating category used by the organization.

* * * * *

Recourse. The term *recourse* means an arrangement in which a savings association retains, in form or in substance, any risk of credit loss directly or indirectly associated with a transferred asset that exceeds the *pro rata* share of the association's claim on the asset. If a savings association has no claim on a transferred asset, then the retention of any risk of loss is recourse. A recourse obligation typically arises when an institution transfers assets and retains an obligation to repurchase the assets or to absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a savings association provides credit enhancement beyond any contractual obligation to support assets it has sold. Recourse obligations include:

(1) Covered representations and warranties on transferred assets;

(2) Retained loan servicing assets if the servicer is responsible for losses associated with the loans being serviced (other than a servicer cash advance);

(3) Retained subordinated interests or securities, or credit derivatives that absorb more than their *pro rata* share of losses from the underlying assets;

(4) Assets sold under an agreement to repurchase; and

(5) Loan strips sold without direct recourse where the maturity of the transferred loan is shorter than the maturity of the commitment.

* * * * *

Securitization. The term *securitization* means the pooling and repackaging of loans or other credit exposures into securities that can be sold to investors. For purposes of § 567.6(b) of this part, the term *securitization* also includes transactions or programs that generally create stratified credit risk positions, whether in the form of a security or not, whose performance is dependent upon an underlying pool of loans or other credit exposures.

Servicer cash advance. The term *servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A servicer cash advance is not a recourse obligation or a direct credit substitute if the servicer is entitled to full reimbursement or, for any single residential mortgage loan, nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal on that loan.

Standby letter of credit. The term *standby letter of credit* means any financial guarantee-type standby letter of credit or performance-based standby letter of credit.

* * * * *

Traded position. The term *traded position* means a recourse obligation, direct credit substitute, or asset- or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that is rated with a reasonable expectation that, in the near future:

(1) The position would be sold to investors relying on the rating; or

(2) A third party would, in reliance on the rating, enter into a transaction such as a purchase, loan, or repurchase agreement involving the position.

* * * * *

3. Section 567.2 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 567.2 Minimum regulatory capital requirement.

(a) * * *

(1) *Risk-based capital requirement.* (i) A savings associations' minimum risk-based capital requirement shall be an amount equal to 8% of its risk-weighted assets as measured under § 567.6 of this part.

* * * * *

4. Section 567.6 is amended by:

A. Revising paragraph (a) introductory text;

B. Revising paragraph (a)(1) introductory text;

C. Revising paragraph (a)(2) introductory text;

D. Removing and reserving paragraphs (a)(2)(i)(A) and (C);

E. Revising paragraph (a)(2)(i)(B);

F. Revising paragraph (a)(2)(ii)(A);

G. Removing paragraph (a)(3); and

H. Adding paragraph (b) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) *Risk-weighted assets.* Risk-weighted assets equal risk-weighted on-balance-sheet assets (as computed under paragraph (a)(1) of this section), plus risk-weighted off-balance-sheet activities (as computed under paragraph (a)(2) of this section), plus risk-weighted recourse obligations, direct credit substitutes and asset- and mortgage-backed securities (as computed under

paragraph (b) of this section). Assets not included for purposes of calculating capital under § 567.5 are not included in calculating risk-weighted assets.

(1) *On-balance-sheet assets.* Except as provided in paragraph (b) of this section, risk-weighted on-balance-sheet assets are computed by multiplying the on-balance-sheet asset amounts times the appropriate risk weight categories. The risk weight categories for on-balance-sheet assets are:

* * * * *

(2) *Off-balance-sheet activities.* Except as provided in paragraph (b) of this section, risk-weighted off-balance-sheet items are determined by the following two-step process. First, the face amount of the off-balance-sheet item must be multiplied by the appropriate credit conversion factor listed in this paragraph (a)(2). This calculation translates the face amount of an off-balance-sheet exposure into an on-balance-sheet credit-equivalent amount. Second, the credit-equivalent amount must be assigned to the appropriate risk weight category using the criteria regarding obligors, guarantors, and collateral listed in paragraph (a)(1) of this section, *provided* that the maximum risk weight assigned to the credit-equivalent amount of an interest-rate or exchange-rate contract is 50 percent. The following are the credit conversion factors and the off-balance-sheet items to which they apply.

(i) * * *

(B) Risk participations purchased in bank acceptances.

* * * * *

(ii) * * *

(A) Transaction-related contingencies, including, among other things, performance bonds and performance-based standby letters of credit related to a particular transaction;

* * * * *

(b) *Recourse obligations, direct credit substitutes, and asset-and mortgage-backed securities*—(1) *In general.* Except as otherwise provided in this paragraph (b), to calculate the risk-weighted asset amount for a recourse obligation, direct credit substitute, or asset- or mortgage-backed security, multiply the amount of assets from which risk of credit loss is directly or indirectly retained or assumed, by the appropriate risk weight using the criteria regarding obligors, guarantors, and collateral listed in paragraph (a)(1) of this section. For purposes of this paragraph (b), the amount of assets from which risk of credit loss is directly or indirectly retained or assumed means:

(i) For a financial guarantee-type standby letter of credit, surety arrangement, credit derivative, guarantee, or irrevocable guarantee-type instruments, the amount of the assets that the direct credit substitute fully or partially supports;

(ii) For a subordinated interest or security, the amount of the subordinated interest or security plus all more senior interests or securities;

(iii) For mortgage servicing assets that are recourse obligations or direct credit substitutes, the outstanding amount of unpaid principal of the loans serviced;

(iv) For covered representations and warranties, the amount of the assets subject to the representations or warranties;

(v) For loans or lines of credit that provide credit enhancement for the financial obligations of an account party, the amount of the enhanced financial obligations;

(vi) For loans strips, the amount of the loans;

(vii) For assets sold with recourse, the amount of assets from which risk of loss is directly or indirectly retained, less any applicable recourse liability account established in accordance with generally accepted accounting principles; and

(viii) Other types of recourse obligations and direct credit substitutes should be treated in accordance with the principles contained in this paragraph (b).

(2) *Ratings-based approach*—(i) *Calculation.* As an alternative to the calculation described in paragraph (b)(1) of this section, a savings association may calculate the risk-weighted asset amount for eligible recourse obligations, direct credit substitutes, or asset- or mortgage-backed securities described in paragraph (b)(2)(ii) of this section by multiplying the face amount of the position by the risk-weight associated with the applicable rating under the following chart.

Rating category	Risk weight
Highest or second highest investment grade	20%.
Third highest investment grade	50%.
Fourth highest investment grade	100%.
One grade below investment grade	200%.
More than one grade below investment grade or not rated	Risk weight the asset under paragraph (b)(1) of this section.

(ii) *Eligibility.* To be eligible for the treatment described in this paragraph (b)(2), a recourse obligation, direct credit substitute, or asset- or mortgage-backed security must meet one of the following criteria:

(A) *Traded position rated by a rating organization.* (*1*) A traded position is eligible for the risk-based capital treatment described in this paragraph (b)(2), if a nationally recognized statistical rating organization rates the position in one of its five highest grades. If two or more nationally recognized statistical rating organizations assign different ratings to a position, the savings association may use the highest rating as the rating of the position for the purposes of this paragraph (b)(2). If a rating changes, the savings association must use the new rating.

(*2*) If a recourse obligation, direct credit substitute, or asset- or mortgage-backed security or other credit risk position is not rated but is senior in all credit risk related features (including access to any collateral) to a rated, traded position, the savings association may risk weight the position under this paragraph (b)(2) using the rating of the traded position. The savings association must satisfy OTS that this treatment is appropriate.

(B) *Non-traded position rated by two rating organizations.* (*1*) A recourse obligation or direct credit substitute that is not a traded position is eligible for the treatment described in this paragraph (b)(2), if two nationally recognized statistical rating organizations rate the recourse obligation or direct credit substitute in one of their five highest grades. The organizations must apply the same criteria that they use to rate securities that are traded positions and must make the rating publicly available.

(*2*) If two or more national recognized statistical rating organizations assign different ratings to the recourse obligation or direct credit substitute, the savings association must use the second highest rating as the rating of the position for the purposes of this paragraph (b)(2). If a rating changes, the

savings association must use the new rating.

(3) *Internal ratings, qualified structured transactions, and credit assessment computer programs*—(i) *Calculation.* As an alternative to the calculation described in paragraph (b)(1) of this section, a savings association may calculate the risk-weighted asset amount for eligible direct credit substitutes described in paragraph (b)(3)(ii) of this section by multiplying the face amount of the position by the risk-weight associated with the applicable rating under the following chart:

Rating category	Risk weight
Investment grade	100%.
One grade below investment grade	200%.
More than one grade below investment grade or not rated	Risk weight the asset under paragraph (b)(1) of this section.

(ii) *Eligibility.* To be eligible for the treatment described in this paragraph (b)(3), a direct credit substitute must meet one of the following criteria.

(A) *Non-traded position rated internally.* A direct credit substitute assumed or issued in connection with an asset-backed commercial paper program and that is not a traded position is eligible for the treatment described in this paragraph (b)(3), if a savings association that is the sponsor of the program rates the direct credit substitute as investment grade or one category immediately below investment grade. The savings association must use an internal risk weighting system that is satisfactory to OTS. Adequate internal risk rating systems typically:

(*1*) Are an integral part of an effective risk management system that explicitly incorporates the full range of risks arising from the institution's securitization activities.

(*2*) Link ratings to measurable outcomes, such as the probability that the position will experience loss, the expected loss on the position in the event of default, and variance of losses in the event of default on that position;

(*3*) Separately consider the risk associated with the underlying loans or borrowers, and the risk associated with the structure of the particular securitization transaction;

(*4*) Identify gradations of risk even among those assets where no loss is likely as well as other risk positions;

(*5*) Use clear, explicit criteria to classify assets into each internal rating category;

(*6*) Employ independent credit risk management or loan review personnel to assign or review the internal ratings;

(*7*) Include an internal audit procedure to periodically verify that internal risk ratings are assigned in accordance with the savings association's established criteria;

(*8*) Monitor the performance of the assigned internal ratings to determine if the system correctly identified individual ratings and, if appropriate, adjust the rating system and individual ratings; and

(*9*) Use assumptions and methodologies that are consistent with, or more conservative than, the rating assumptions and methodologies used by nationally recognized statistical rating organizations.

(B) *Non-traded positions in approved securitization or structured financing programs.* A direct credit substitute that is not a traded position is eligible for the treatment described in this paragraph (b)(3), if the position is generated through a securitization or structured financing program that is approved by OTS. OTS will not approve the use of a securitization or structured financing program unless the program meets the following minimum criteria and other appropriate prudential standards:

(*1*) A nationally recognized statistical rating organization (or other entity approved by OTS) must review the terms of the program, and state a rating for the direct credit substitutes to be issued under the program. If the program has options for different combinations of assets, standards, internal or external credit enhancements and other relevant factors, the rating organization or other approved entity may specify ranges of rating categories that will be applied based on the options that are utilized in the position.

(*2*) The savings association must demonstrate to OTS' satisfaction that the rating corresponds credibly and reliably with the ratings issued by nationally recognized statistical rating organizations for traded positions, and that the rating organization's or other entity's underlying premises are satisfied by the direct credit substitute.

(*3*) If a savings association participates in a securitization or structured financing program sponsored by another party, OTS may authorize the savings association to use this approach based on the program rating obtained by the sponsor of the program.

(C) *Non-traded position in a structured financing program rated by using qualifying credit assessment computer software.* A direct credit substitute that is not a traded position is eligible for the treatment described in this paragraph (b)(3), if the position is generated through a structured financing program and the position is rated using credit assessment computer software that has been approved by OTS. OTS will not approve the use of credit assessment computer software unless the software meets the following minimum criteria and other appropriate prudential standards:

(*1*) A nationally recognized statistical rating organization (or other entity approved by OTS) developed the computer software for determining the credit ratings of direct credit substitutes and other stratified positions; and

(*2*) The savings association must demonstrate that the ratings generated using the computer software correspond credibly and reliably with the ratings issued by nationally recognized statistical rating organizations for traded positions.

(4) *Alternative capital computation for small business obligations*—(i) *Definitions.* For the purposes of this paragraph (b)(4):

(A) *Qualified savings association* means a savings association that:

(*1*) Is well capitalized as defined in § 565.4 of this chapter without applying the capital treatment described in paragraph (b)(4)(ii) of this section; or

(*2*) Is adequately capitalized as defined in § 565.4 of this chapter without applying the capital treatment described in paragraph (b)(4)(ii) of this section and has received written permission from the OTS to apply that capital calculation.

(B) *Small business* means a business that meets the criteria for a small business concern established by the Small Business Administration in 13 CFR part 121 pursuant to 15 U.S.C. 632.

(ii) *Capital requirement.* With respect to a transfer of a small business loan or lease of personal property with recourse that is a sale under generally accepted accounting principles, a qualified savings association may elect to include

only the amount of its retained recourse in its risk-weighted assets for the purposes of paragraph (b)(1) of this section. To qualify for this election, the savings association must establish and maintain a reserve under generally accepted accounting principles sufficient to meet the reasonable estimated liability of the savings association under the recourse obligation.

(iii) *Aggregate amount of recourse.* The total outstanding amount of recourse retained by a qualified savings association with respect to transfers of small business loans and leases of personal property and included in the risk-weighted assets of the savings association as described in paragraph (b)(4)(ii) of this section, may not exceed 15 percent of the association's total capital computed under § 567.5(c)(4).

(iv) *Savings association that ceases to be a qualified savings association or that exceeds aggregate limits.* If a savings association ceases to be a qualified savings association or exceeds the aggregate limit described in paragraph (b)(4)(iii) of this section, the savings association may continue to apply the capital treatment described in paragraph (b)(4)(ii) of this section to transfers of small business loans and leases of personal property that occurred when the association was a qualified savings association and did not exceed the limit.

(v) *Prompt corrective action not affected.* (A) A savings association shall compute its capital without regard to this paragraph (b)(4) of this section for purposes of prompt corrective action (12 U.S.C. 1831o), unless the savings association is adequately or well capitalized without applying the capital treatment described in this paragraph (b)(4) and would be well capitalized after applying that capital treatment.

(B) A savings association shall compute its capital requirement without regard to this paragraph (b)(4) for the purposes of applying 12 U.S.C. 1381o(g), regardless of the association's capital level.

(5) *Risk participations and syndications of direct credit substitutes.* Except as otherwise provided in this paragraph (b) and subject to the low level recourse rule, a savings association must calculate the risk-weighted asset amount for a risk participation in, or syndication of, a direct credit substitute as described below. For the purposes of this paragraph (b)(5), in a risk participation the originator of the participation remains liable to the beneficiary for the full amount of the direct credit substitute, even though another party may have acquired a participation in the obligation:

(i) Where a savings association conveys a risk participation, the savings association must risk weight the full amount the assets supported, in whole or in part, by the direct credit substitute. The savings association must assign a percentage share (*i.e.*, the percentage of the direct credit substitute that is conveyed) of these assets to the lower of: the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral; or the risk-weight category appropriate to the entity acquiring the participation. The remainder of the assets supported, in whole or in part, by the direct credit substitute, must be assigned to the risk-weight category appropriate to the obligor, guarantor or collateral.

(ii) If a savings association acquires a risk participation in a direct credit substitute, the savings association must multiply a percentage share (*i.e.* the percentage of the direct credit substitute that is acquired) by the full amount the assets supported, in whole or in part, by the direct credit substitute. The savings association must assign this amount to the risk-weight category appropriate to the account party obligor, guarantor or collateral.

(iii) If the savings association holds a direct credit substitute as a part of a syndication and it is obligated only for its *pro rata* share of the risk of loss on the direct credit substitute and there is no recourse to the originating entity, the savings association must assign its share of the assets supported, in whole or in part, by the direct credit substitute to the risk-weight category appropriate to the obligor, guarantor or collateral.

(6) *Limitations on risk-based capital requirements*—(i) *Low-level recourse.* If the maximum contractual liability or exposure to credit loss retained or assumed by a savings association in connection with a recourse obligation or a direct credit substitute calculated under paragraphs (b)(1) through (5) of this section is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual liability or exposure to loss, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply to assets sold with implicit recourse.

(ii) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a savings association holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance-sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the savings association continued to hold these loans as an on-balance-sheet asset.

(iii) *Related on-balance-sheet assets.* To the extent that an asset may be included in the calculation of risk-weighted on-balance-sheet assets under paragraph (a)(1) of this section and may also be included in the calculation of risk-weighted assets under this paragraph (b), the savings association should risk-weight the asset only under this paragraph (b), except mortgage servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In such cases, the mortgage servicing asset is risk weighted as an on-balance-sheet asset under paragraph (a)(1) of this section and the related recourse obligations and direct credit substitutes are risk-weighted under this paragraph (b).

(7) *Obligations of subsidiaries.* If a savings association retains a recourse obligation or assumes a direct credit substitute on the obligation of a subsidiary that is not an includable subsidiary, and the recourse obligation or direct credit substitute is an equity or debt investment in that subsidiary under generally accepted accounting principles, the face amount of the recourse obligation or direct credit substitute is deducted for capital under §§ 567.5(a)(2) and 567.9(c). All other recourse obligations and direct credit substitutes retained or assumed by a savings association on the obligations of an entity in which the savings association has an equity investment are risk-weighted in accordance with this paragraph (b).

(8) *Addition to risk-weighted assets—managed assets.* (i) A savings association must include an additional amount in the risk-weighted asset amount calculated under this paragraph (b), if:

(A) The savings association sells assets to a revolving securitization (*e.g.,* credit card receivables or home equity line securitizations) with an early amortization feature. An early amortization feature is a provision that, under specified conditions, terminates the ability of the savings association to add new receivables or debt to the securitization, and requires the savings

association to use any payments received from the debtors to pay down the receivables or debts previously included in the securitization; and

(B) The savings association is the sponsor of the revolving securitization.

(ii) The additional amount is equal to the face amount of the assets that the savings association sells to the revolving securitization less the face amount of any recourse obligation or direct credit substitute that the savings association retains or assumes in connection with the sale of the asset, multiplied by a 20 percent risk weight.

5. Section 567.11 is amended by redesignating paragraph (c) as paragraph (c)(1) and adding a new paragraph (c)(2) to read as follows:

§ 567.11 Reservations of authority.

* * * * *

(c) * * *

(2) If a savings association has calculated the risk-weighted asset amount for a recourse obligation, a direct credit substitute or an asset under § 567.6(b), OTS may determine that risk-weighted asset amount does not adequately reflect the credit risk that the savings association assumed or retained in the transaction and require the institution to revise the risk-weighted asset amount to reflect the risk of, and other relevant factors associated with, the recourse obligation, direct credit substitute or asset.

Dated: February 9, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–4211 Filed 3–7–00; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

Federal Register

Wednesday,
March 8, 2000

Part III

Securities and Exchange Commission

17 CFR Part 248

Privacy of Consumer Financial Information (Regulation S–P); Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR part 248

[Release Nos. 34–42484, IC–24326, IA–1856; File No. S7–6–00]

RIN 3235–AH90

Privacy of Consumer Financial Information (Regulation S–P)

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission requests comment on proposed Regulation S–P, privacy rules published under section 504 of the Gramm-Leach-Bliley Act. Section 504 requires the Commission and other federal agencies to adopt rules implementing notice requirements and restrictions on the ability of certain financial institutions to disclose nonpublic personal information about consumers to nonaffiliated third parties. Under the Gramm-Leach-Bliley Act, a financial institution must provide its customers with a notice of its privacy policies and practices, and must not disclose nonpublic personal information about a consumer to nonaffiliated third parties unless the institution provides certain information to the consumer and the consumer has not elected to opt out of the disclosure. The Gramm-Leach-Bliley Act also requires the Commission to establish for financial institutions appropriate standards to protect customer information. The proposed rules implement these requirements of the Gramm-Leach-Bliley Act with respect to financial institutions subject to the Commission's jurisdiction under that Act.

DATES: Comments must be received by March 31, 2000.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–6–00; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: For information regarding the proposed rules as they relate to brokers or dealers, contact George Lavdas, Office of Chief Counsel, at the Division of Market Regulation, (202) 942–0073, or regarding the proposed rules as they relate to investment companies or investment advisers, Penelope W. Saltzman, Office of Regulatory Policy, (202) 942–0690, at the Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the ''Commission'') today is proposing for public comment new Regulation S–P, 17 CFR 248.1–248.30, under the Gramm-Leach-Bliley Act [Pub. L. No. 106–102, 113 Stat. 1338 (1999), to be codified at 15 U.S.C. 6801–6809], the Securities Exchange Act of 1934 [15 U.S.C. 78a] (''Exchange Act''), the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act''), and the Investment Advisers Act of 1940 [15 U.S.C. 80b] (''Investment Advisers Act'').

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I. Background

On November 12, 1999, President Clinton signed the Gramm-Leach-Bliley Act (''G–L–B Act'') [1] into law. Subtitle A of Title V of the Act, captioned ''Disclosure of Nonpublic Personal Information'' (''Title V'') limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties. Title V also requires the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision (collectively, the ''banking agencies''), Secretary of the Treasury, National Credit Union Administration, Federal Trade Commission (collectively with the banking agencies, the ''Agencies''), and the Commission, after consulting with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, to prescribe such regulations as may be necessary to carry out the purposes of the provisions in Title V that govern disclosure of nonpublic personal information.

Commission representatives participated with representatives from the Agencies in drafting proposed rules to implement Title V. As is required by the G–L–B Act, the rules we are proposing today are, to the extent possible, consistent with and comparable to the rules proposed by the Agencies. Proposed Regulation S–P contains rules of general applicability that are substantially similar to the rules proposed by the banking agencies.[2] The proposed rules also contain examples that illustrate the application of the general rules. These examples differ from those used by the banking agencies in order to provide more meaningful guidance to the financial institutions subject to the Commission's jurisdiction.

Title V also requires the Commission (and each of the Agencies) to establish appropriate standards for financial institutions subject to their jurisdiction to safeguard customer information and records. The rules we are proposing today include requirements for brokers, dealers, and investment companies, as well as investment advisers registered with the Commission (''registered investment advisers''), to adopt appropriate policies and procedures that address safeguards to protect this information.

We request comment on all aspects of the proposed rules as well as comment on the specific provisions and issues highlighted in the section-by-section analysis below. We specifically request comment on the proposed examples and on any additional examples that would be helpful.

II. Section-by-Section Analysis

Section 248.1 Purpose and Scope

Proposed paragraph (a) of section 248.1 identifies three purposes of the

[1] Pub. L. 106–102, 113 Stat. 1338 (1999) (to be codified at 15 U.S.C. 6801–6809).

[2] 2. *See* G–L–B Act § 504(a). The banking agencies published a joint release proposing rules to implement Title V earlier this month. Privacy of Consumer Financial Information, 65 FR 8770 (Feb. 22, 2000) (''Banking Agencies'' Proposal''). The Federal Trade Commision proposed its privacy rules on February 24, 2000 [Privacy of Consumer Financial Information, available at <www.ftc.gov>]. The National Credit Union Administration approved its rule proposal the same day [Privacy of Consumer Financial Information, Requirements for Insurance, available at <www.ncua.gov>].

rules. First, the rules require a financial institution to provide notice to consumers about the institution's privacy policies and practices. Second, the rules describe the conditions under which a financial institution may disclose nonpublic personal information about a consumer to a nonaffiliated third party. Third, the rules provide a method for a consumer to ''opt out'' of the disclosure of that information to nonaffiliated third parties, subject to certain exceptions discussed below.

Proposed paragraph (b) sets out the scope of the Commission's rules and lists the entities subject to the Commission's enforcement jurisdiction under section 505(a) of the G–L–B Act.[3] This paragraph notes that the rules apply only to information about individuals who obtain a financial product or service from a financial institution to be used for personal, family, or household purposes.

We note that other federal, State, or applicable foreign laws may impose limitations on disclosures of nonpublic personal information in addition to those imposed by the G–L–B Act and these proposed rules.[4] Thus, financial institutions will need to monitor and comply with relevant legislative and regulatory developments that affect the disclosure of consumer information.

Section 248.2 Rule of Construction

Proposed section 248.2 sets out a rule of construction intended to clarify the effect of the examples used in the rules. Given the wide variety of transactions that Title V covers, the proposal would include rules of general applicability and provide examples that are intended to assist financial institutions in complying with the rule. These examples are not intended to be exhaustive; rather, they are intended to provide guidance about how the rules are likely to apply in specific situations.[5] We invite comment on whether including examples in the rule is useful, and suggestions on additional or different examples that may be helpful in providing guidance as to the applicability of the rule.

Section 248.3 Definitions

(a) *Affiliate.* The proposed rules incorporate the definition of ''affiliate'' used in section 509(6) of the G–L–B Act. A broker, dealer, investment company, or registered investment adviser will be considered affiliated with another company if it ''controls,'' is controlled by, or is under common control with the other company.[6] The definition includes both financial institutions and entities that are not financial institutions.

The Commission's definition of control differs from the definition adopted by the Agencies.[7] The proposed rules also provide that a broker, dealer, investment company, or registered investment adviser will be considered an affiliate of another company for purposes of the privacy rules if: (i) the other company is regulated under Title V by one of the Agencies and (ii) the privacy rules adopted by that Agency treat the broker, dealer, investment company, or registered investment adviser as an affiliate of the other company.[8]

(b) *Broker.* For purposes of this part, the term ''broker'' is defined to have the same meaning as in section 3(a)(4) of the Exchange Act,[9] whether or not the institution is registered under section 15(b) of the Exchange Act.[10] The term includes a municipal securities broker as defined in section 3(a)(31) of the Exchange Act,[11] whether or not it is registered under section 15(b) of the Exchange Act.[12] The definition also includes a government securities broker as defined in section 3(a)(43) of the Exchange Act [13] (other than a bank as defined in section 3(a)(6) of the Exchange Act [14]) whether or not the broker is registered under sections 15(b) or 15C(a)(2) of the Exchange Act.[15]

(c) *Clear and conspicuous.* Title V and the proposed rules require that various notices be ''clear and conspicuous.'' The proposed rules define this term to mean that the notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.

The proposed rules do not mandate the use of any particular technique for making the notices clear and conspicuous, but instead allow each financial institution the flexibility to decide for itself how best to comply with this requirement. A notice could satisfy the clear and conspicuous standard, for instance, by using a plain-language caption, in a type set easily read, that is designed to call attention to the information contained in the notice. Other plain language principles are provided in the examples that follow the general rule.

(d) *Collect.* The proposed rules define ''collect'' to mean obtaining any

[3] Section 505(a) of the G–L–B Act requires the Commission to enforce the G–L–B Act and regulations adopted under the Act as follows: with respect to brokers and dealers under the Exchange Act, with respect to investment companies under the Investment Company Act, and with respect to investment advisers registered with the Commission under the Investment Advisers Act. Therefore, in addition to its authority under section 504 of the G–L–B Act, the Commission is proposing this part under its rulemaking authority under the Exchange Act, the Investment Company Act, and the Investment Advisers Act. Financial institutions subject to this part would also be subject to the Commission's enforcement of this part under those statutes.

[4] For example, an investment adviser may be subject to fiduciary principles under state law that impose additional limits on the adviser's ability to disclose information about its customers to any third party. *See* Restatement (Second) of Agency § 395 (an agent is subject to a duty to the principal not to use or to communicate information confidentially given him by the principal or acquired by him during the course of his agency); *General Acquisition, Inc.* v. *Gencorp Inc.,* 766 F.Supp. 1460, 1475 (S.D. Ohio 1990) (''[I]t is well settled that a fiduciary is under a duty not to disclose or use for his own benefit confidential information acquired in the course of its fiduciary relationship'').

[5] The banking agencies' proposal provides that, to the extent applicable, compliance with the examples would constitute compliance with the applicable rule. *See, e.g.,* Banking Agencies' Proposal, proposed §§ 40.2, 216.2, 332.2, 573.2. The examples in our proposed rules, however, would not provide the same safe harbor. The examples are intended to describe ordinary situations that would comply with the applicable rule, but the particular facts and circumstances relating to each specific situation will determine whether compliance with an example constitutes compliance with the rule.

[6] We have defined ''control'' for purposes of brokers, dealers, investment companies, and registered investment advisers to mean the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. In addition, ownership of more than 25 percent of a company's voting securities creates a presumption of control of the company. *See infra* discussion of proposed section 248.3(i).

[7] Under the Banking Agencies' Proposal, for example, control means ownership of 25 percent of a company's voting securities, control over the election of a majority of the directors, trustees or general partners of the company, or the power to exercise a controlling influence over management or policies of a company, as determined by the particular agency. *See, e.g.,* Banking Agencies' Proposal, proposed §§ 40.3(g), 216.3(g), 332.3(g), 573.3(g).

[8] Proposed § 248.3(a)(1)–(2). This part of the proposed definition is designed to prevent the disparate treatment of affiliates within a holding company structure. Without this provision, a broker-dealer in a bank holding company structure might not be considered affiliated with another entity in that organization under the Commission's proposed rules, even though the two entities would be considered affiliated under the Banking Agencies' Proposal.

[9] 15 U.S.C. 78c(a)(4).

[10] 15 U.S.C. 78o(b).

[11] 15 U.S.C. 78c(a)(31).

[12] 15 U.S.C. 78o(b).

[13] 15 U.S.C. 78c(a)(43).

[14] 15 U.S.C. 78c(a)(6). For purposes of this definition and the definition of ''dealer'' (*see* proposed § 248.3(l)), the term ''bank'' does not include a foreign bank (as that term is defined in section 1(b)(7) the International Banking Act of 1978, 12 U.S.C. 3101(7)) or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)) the deposits of which are insured by the Federal Deposit Insurance Corporation.

[15] 15 U.S.C. 78o(b), 78o–5(a)(2).

information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information. Several sections of the proposed rules impose obligations that arise when a financial institution collects information about a consumer.[16] This proposed definition clarifies that these obligations arise when the information enables the user to identify a particular consumer. It also clarifies that the obligations arise regardless of whether the financial institution obtains the information from a consumer or from some other source.

(f) *Company.* The proposed rules define ''company,'' which is used in the definition of ''affiliate,'' as any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(g) *Consumer.* The proposed rules define ''consumer'' to mean an individual who obtains, from a financial institution, financial products or services that are to be used primarily for personal, family, or household purposes. An individual also will be deemed to be a consumer for purposes of a financial institution if that institution purchases the individual's account from some other institution. The definition also includes the legal representative of an individual.

The G–L–B Act distinguishes ''consumers'' from ''customers'' for purposes of the notice requirements imposed by the Act. As explained below in the discussion of proposed section 248.4, a financial institution must give a ''consumer'' the notices required under Title V only if the institution intends to disclose nonpublic personal information about the consumer to a nonaffiliated third party for a purpose that is not authorized by one of several exceptions set out in proposed sections 248.10 and 248.11. By contrast, a financial institution must give all ''customers,'' at the time of establishing a customer relationship and annually thereafter during the continuation of the customer relationship, a notice of the institution's privacy policy.

A person is a ''consumer'' under the proposed rules if he or she obtains a financial product or service from a financial institution. The definition of ''financial product or service'' in proposed section 248.3(n) includes, among other things, a financial institution's evaluation of an individual's application to obtain a financial product or service. Thus, a financial institution that intends to share nonpublic personal information about a consumer with nonaffiliated third parties outside of the exceptions described in sections 248.10 and 248.11 will have to give the requisite notices, even if the consumer does not enter into a customer relationship with the institution.

The examples that follow the definition of ''consumer'' explain when someone is a consumer. The examples clarify that a consumer includes someone who provides nonpublic personal information in connection with seeking to obtain brokerage or investment advisory services, but does not include someone who provides only name, address, and areas of investment interest in order to obtain a prospectus, investment adviser brochure, or other information about a financial product.[17] An individual who has an account with an introducing broker and whose securities are carried by a clearing broker in a special omnibus account in the name of the introducing broker is not a consumer for purposes of the clearing broker if it receives no nonpublic personal information about the consumer. Similarly, investment company shareholders who are not the record owners of their shares would not be consumers for purposes of the investment company.[18]

(h) *Consumer reporting agency.* The proposed rules incorporate the definition of ''consumer reporting agency'' in section 603(f) of the Fair Credit Reporting Act.[19] This term is used in proposed sections 248.11 and 248.13.

(i) *Control.* The proposed rules define ''control'' for purposes of brokers, dealers, investment companies, and registered investment advisers to mean the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise.[20] In addition, ownership of more than 25 percent of a company's voting securities creates a presumption of control of the company.[21] This definition is used to determine when companies are affiliated,[22] and would result in financial institutions being considered as affiliates regardless of whether the control is exercised by a company or individual.

(j) *Customer.* The proposed rules define ''customer'' as any consumer who has a ''customer relationship'' with a particular financial institution. As explained more fully in the discussion of proposed section 248.4 below, a consumer becomes a customer of a financial institution when he or she enters into a continuing relationship with the institution. For example, a consumer would become a customer when he or she enters into an investment advisory contract (whether written or oral), completes the documents needed to open a brokerage account, or purchases shares of an investment company in his or her own name.

The distinction between consumers and customers determines the notices that a financial institution must provide. If a consumer never becomes a customer, the institution is not required to provide any notices to the consumer unless the institution intends to disclose nonpublic personal information about that consumer to nonaffiliated third parties (outside of the exceptions as set out in sections 248.10 and 248.11). By contrast, if a consumer becomes a customer, the institution must provide a copy of its privacy policy before it establishes the customer relationship and at least annually during the continuation of the customer relationship.

(k) *Customer relationship.* The proposed rules define ''customer relationship'' as a continuing relationship between a consumer and a financial institution in which the institution provides a financial product or service that is to be used by the consumer primarily for personal, family, or household purposes. Because the G–L–B Act requires annual notices of the financial institution's privacy policies to its customers, we have interpreted the Act as requiring more than isolated transactions between a financial institution and a consumer to establish a customer relationship, unless it is reasonable to expect further contact about that transaction between the institution and consumer afterwards. Thus, the proposed rules define ''customer relationship'' as one that generally is of a continuing nature. As noted in the examples that follow the definition, this would include a brokerage account or investment advisory relationship. A broker would have a customer relationship with a consumer when the broker regularly effects securities transactions for the

[16] *See, e.g.,* proposed §§ 248.6, 248.7.

[17] Individuals may provide this information, for example, on ''tear-out'' cards from magazines, or in telephone or Internet requests for prospectuses or brochures.

[18] *See also infra* discussion of proposed section 248.3(k) (definition of ''customer relationship'').

[19] 15 U.S.C. 1681a(f).

[20] *See, e.g.*, 17 CFR 240.19g2–1(b)(2).

[21] This presumption may be rebutted by evidence, but, in the case of an investment company, will continue until the Commission makes a decision to the contrary according to the procedures described in section 2(a)(9) of the Investment Company Act [15 U.S.C. 80a–2(a)(9)].

[22] *See* discussion of proposed § 248.3(a), *supra.*

customer, even if the broker holds none of the customer's assets.

A one-time transaction may be sufficient to establish a customer relationship, depending on the nature of the transaction. The examples that follow the definition of ''customer relationship'' clarify that an individual's purchase of securities through a broker with whom the customer opens an account would be sufficient to establish a customer relationship because of the continuing nature of the service. The individual would be a customer even if the account is established only to hold securities or other assets as collateral for a loan made by another institution. By contrast, an individual who purchases securities through a broker would not be the broker's customer if the broker provides the service as an accommodation but does not open an account for the individual.[23] Similarly, a consumer does not become a broker's customer when the broker liquidates securities for the consumer on a one-time basis.

The examples also clarify that a consumer will have a customer relationship with an investment company whose shares the consumer owns in his or her own name, even if the consumer purchased those shares through a broker or investment adviser. In that case, the individual will be a customer of both the broker or investment adviser who sold the shares *and* the investment company. Similarly, an introducing broker's customer will also be a customer of the broker that clears customer transactions for the introducing broker on a fully disclosed basis.

(l) *Dealer.* The proposed rules define the term ''dealer'' to have the same meaning as in section 3(a)(5) of the Exchange Act,[24] whether or not the dealer is registered under section 15(b) of the Exchange Act. The term includes a municipal securities dealer as defined in section 3(a)(30) of the Exchange Act,[25] other than a bank (as defined in section 3(a)(6) of the Exchange Act [26]), whether or not the dealer is registered under sections 15(b) or 15B(a)(2) of the Exchange Act. The term also includes a government securities dealer as defined in section 3(a)(44) of the Exchange Act,[27] whether or not the dealer is registered under sections 15(b) or 15C(a)(2) of the Exchange Act.

(m) *Financial institution.* The proposed rules define ''financial institution'' as any institution the business of which is engaging in activities that are financial in nature, or incidental to such financial activities, as described in section 4(k) of the Bank Holding Company Act of 1956 (''Bank Holding Company Act''),[28] including brokers, dealers, investment companies, and registered investment advisers. The proposed rules also exempt from the definition of ''financial institution'' those entities specifically excluded by the G–L–B Act.

(n) *Financial product or service.* The proposed rules define ''financial product or service,'' for purposes of Regulation S–P only, as a product or service that a financial institution could offer as an activity that is financial in nature, or incidental to such a financial activity, under section 4(k) of the Bank Holding Company Act. An activity that is complementary to a financial activity, as described in section 4(k), is not included in the definition of ''financial product or service'' under this part. The proposed definition includes the financial institution's evaluation of information collected in connection with an application by a consumer for a financial product or service even if the application ultimately is rejected or withdrawn. It also includes the distribution of information about a consumer for the purpose of assisting the consumer to obtain a financial product or service. To avoid confusion as to whether an investment company shareholder is an owner or a customer of the institution, the proposed definition clarifies that, for purposes of this regulation, the term ''financial product'' includes shares of an investment company.

(p) *Government regulator.* The proposed rules define ''government regulator'' to include the Commission and each of the Agencies and State insurance authorities. This term is used in two places. First, the term is used in proposed section 248.3(a), the definition of ''affiliate.'' Second, the term is used in the exception set out in proposed section 248.11(a)(4) for disclosures to law enforcement agencies, ''including government regulators.''

(q) *Investment adviser.* The proposed definition incorporates the definition of investment adviser in section 202(a)(11) of the Investment Advisers Act.[29]

(r) *Investment company.* The proposed definition incorporates the meaning of investment company in section 3 of the Investment Company Act, whether or not the investment company is registered with the Commission.[30] The definition also clarifies that the term includes a separate series of an investment company.

(s) *Nonaffiliated third party.* Paragraph (1) of the proposed definition of ''nonaffiliated third party'' provides that the term means any person (which is defined in proposed section 248.3(u) and includes natural persons as well as legal entities such as corporations, partnerships, and trusts) except (i) an affiliate of a financial institution, and (ii) a joint employee of a financial institution and a third party. This paragraph is intended to be substantively the same as the definition used in section 509(5) of the G–L–B Act.

(t) *Nonpublic personal information.* Section 509(4) of the G–L–B Act defines ''nonpublic personal information'' to mean ''personally identifiable financial information'' (which the Act does not define) that (i) is provided by a consumer to a financial institution, (ii) results from any transaction with the consumer or any service performed for the consumer, or (iii) is otherwise obtained by the financial institution. ''Nonpublic personal information'' also includes any list, description, or other grouping of consumers—and ''publicly available information'' pertaining to them—that is derived using any nonpublic personal information.

The proposed rules implement this provision of the G–L–B Act by restating, in paragraph (1) of proposed section 248.3(t), the general categories of information described above. Paragraph (2) provides that ''nonpublic personal information'' does not include publicly available information when the information is part of a list, description, or other grouping of consumers that is derived without using personally identifiable financial information.[31] The definition also excludes any other publicly available information, unless the information is part of a list, description, or other grouping of consumers that is derived using

[23] The individual would, however, be a consumer for purposes of the broker, which would require the broker to provide notices *if* it intends to disclose nonpublic personal information about the consumer to nonaffiliated third parties outside of the exceptions.

[24] 15 U.S.C. 78c(a)(5).

[25] 15 U.S.C. 78c(a)(30).

[26] *See supra* note 14.

[27] 15 U.S.C. 78c(a)(44).

[28] 12 U.S.C. 1843(k).

[29] 15 U.S.C. 80b–2(a)(11).

[30] 15 U.S.C. 80a–3. Thus, a business development company, which is an investment company but is not required to register with the Commission, would be subject to this part. *See* 15 U.S.C. 80a–2(a)(48).

[31] Nonpublic personal information does include publicly available information that is disclosed in a manner that otherwise indicates the individual is a financial institution's consumer. *See* proposed § 248.3(t)(2)(i). We believe that, in most cases, sharing information (including publicly available information) about a consumer with a third party identifies the individual as the institution's consumer.

personally identifiable financial information.

We invite comment on whether the definition of ''nonpublic personal information'' should cover information about a consumer that contains no indicators of a consumer's identity. For example, if a broker provided aggregate information about its brokerage accounts (such as securities transaction information) to a nonaffiliated third party for the purpose of preparing market studies, should the broker, without giving notice or opportunity to opt out to the consumer, be permitted to do so if the information contains no personal identifiers?

(v) *Personally identifiable financial information.* As discussed above, the G–L–B Act defines ''nonpublic personal information'' to include, among other things, ''personally identifiable financial information'' but does not define the latter term. As a general matter, the proposed rules treat any personally identifiable information as financial if the financial institution obtains the information in connection with providing a financial product or service to a consumer. We believe that this approach reasonably interprets the word ''financial'' and creates a workable and clear standard for distinguishing information that is financial from other personal information. This interpretation would cover a broad range of personal information provided to a financial institution, including, for example, information about the consumer's health.

The proposed rules define ''personally identifiable financial information'' to include three categories of information. The first category includes any information that a consumer provides a financial institution in order to obtain a financial product or service from the institution. As noted in the examples that follow the definition, this would include information provided when opening a brokerage account, entering into an investment advisory contract, or obtaining a margin loan or a financial plan. If, for example, a consumer provides medical information on an application to obtain a financial product or service (such as a variable life insurance contract offered by an insurance company separate account), that information would be considered ''personally identifiable financial information'' for purposes of the proposed rules. Similarly, information that may be required for financial planning purposes, including details about retirement and family obligations, such as the care of a disabled child, would be covered by the definition.

The second category includes any information about a consumer resulting from any transaction between the consumer and the financial institution involving a financial product or service. This would include, as noted in the examples following the definition, information about account balance, payment or overdraft history, credit or debit card purchases, securities positions, or financial products purchased or sold.

The third category includes any financial information about a consumer otherwise obtained by the financial institution in connection with providing a financial product or service.

This would include, for example, information obtained from a consumer report or from an outside source to verify information a consumer provides on an application to obtain a financial product or service. It would not, however, include information that is publicly available (unless, as previously noted, the information is part of a list of consumers that is derived using personally identifiable financial information).

The examples clarify that the definition of ''personally identifiable financial information'' does not include a list of names and addresses of people who are customers of an entity that is not a financial institution. Thus, the names and addresses of people who subscribe, for instance, to a particular magazine would fall outside the definition. The Commission seeks comment on whether further definition of ''personally identifiable financial information'' would be helpful.

(w) *Publicly available information.* The proposed rules define ''publicly available information'' as information the financial institution reasonably believes is lawfully made available to members of the general public from three broad types of sources.[32] First, it includes information from official public records, such as real estate recordations or security interest filings. Second, it includes information from widely distributed media, such as a telephone book, radio program, or newspaper. Third, it includes information from disclosures required to be made to the general public by federal, State, or local law, such as securities disclosure documents. The proposed rules state that information obtained over the Internet will be considered publicly available information if the information is obtainable from a site available to the general public without requiring a password or similar restriction. The Commission invites comment on what information is appropriately considered publicly available, particularly in the context of information available over the Internet.

The proposed rules treat information as publicly available if it **COULD** be obtained from one of the public sources listed in the rules. If an institution reasonably believes the information is lawfully made available to the general public from one of the listed public sources, then the information will be considered publicly available and excluded from the scope of ''nonpublic personal information,'' whether or not the institution obtains it from a publicly available source (unless, as previously noted, it is part of a list of consumers that is derived using personally identifiable financial information). Under this approach, the fact that a consumer has given information to a financial institution would not automatically extend to that information the protections afforded to nonpublic personal information.

The Commission invites comment on whether the proposed definition of ''publicly available information'' should treat information that is publicly available as nonpublic if the institution does not *obtain* the information from a listed public source (''alternative definition'').[33] In many cases, the proposed definition and the alternative definition would result in the same treatment of information that may be publicly available. For example, under either definition, names and addresses that are publicly available would be treated as nonpublic personal information if they appear in a customer list. An institution that intends to share a customer list containing that information with nonaffiliated third parties would have to comply with the proposed rule's notice and opt out requirements. The alternative definition could, however, result in different notice and opt out requirements when an institution shares information available from public sources about individual customers. In that situation the proposed definition would not require the institution to comply with notice and opt out requirements as long

[32] We recognize that some information that is available to the general public may have been published illegally. In some cases, such as a list of customer account numbers posted on a web site, the publication will be obviously unlawful. In other cases, the legality of the publication may be unclear or unresolved. The proposed rule would provide that information is ''publicly available'' if the institution reasonably believes that informaiton is lawfully available to the public.

[33] The Banking Agencies Proposal (other than the Federal Reserve Board, which proposed the same definition as the Commission) includes this alternative definition. *See, e.g.*, Banking Agencies' Proposal, proposed §§ 40.3(n)–(p), 573.3(n)–(p), Alternatives A and B.

as the institution did not share the information in a manner that would indicate that the individual is or had been the institution's customer. The alternative definition, however, would require compliance with the notice and opt out requirements because the institution did not obtain the information from a public source.

(q) *You.* The term ''you'' is used in order to make the rules easier to understand and use. The proposed definition refers to the entities within the Commission's jurisdiction under Title V. The term includes brokers, dealers, investment companies, and registered investment advisers.

Section 248.4 Initial Notice to Consumers of Privacy Policies and Practices Required

Initial notice required. The G–L–B Act requires a financial institution to provide an initial notice of its privacy policies and practices in two circumstances. For customers, the notice must be provided at the time of establishing a customer relationship. For consumers who do not (or have not yet) become customers, the notice must be provided before disclosing nonpublic personal information about the consumer to a nonaffiliated third party.

Paragraph (a) of proposed section 248.4 states the general rule regarding these notices. A financial institution must provide a clear and conspicuous [34] notice that accurately reflects the institution's privacy policies and practices. Thus, a financial institution must maintain the protections that the notice represents the institution will provide. The Commission expects that brokers, dealers, investment companies, and registered investment advisers will take appropriate measures to adhere to their stated privacy policies and practices.

The proposed rules do not prohibit two or more institutions from providing a joint initial, annual, or opt out notice, as long as the notice is delivered in accordance with the rule and is accurate for all recipients. For example, institutions that could give a joint initial, annual, or opt out notice include: (i) An introducing broker and its clearing broker (that clears on a fully disclosed basis) and (ii) an investment company and a broker-dealer that distributes its shares. The rules also do not preclude an institution from establishing different privacy policies and practices for different categories of consumers, customers, or products, if each particular consumer or customer receives a notice that is accurate with respect to that individual.

Notice to customers. The proposed rules require that a financial institution provide an individual a privacy notice prior to the time that it establishes a customer relationship. Thus, the notices may be provided at the same time a financial institution is required to give other notices, such as the requirement that credit terms in margin transactions be disclosed under Exchange Act rule 10b–16,[35] or that customers be notified in writing of the existence of a carrying or clearing arrangement for accounts introduced on a fully disclosed basis to another broker, under rules applicable to members of the New York Stock Exchange and National Association of Securities Dealers.[36] This approach is intended to strike a balance between (i) ensuring that consumers will receive privacy notices at a meaningful point when ''establishing a customer relationship'' and (ii) minimizing unnecessary burdens on financial institutions that may result if a financial institution is required to provide a consumer with a series of notices at different times in a transaction. Nothing in the proposed rules is intended to discourage a financial institution from providing an individual with a privacy notice at an earlier point in the relationship if the institution wishes to do so in order to help the individual compare its privacy policies with those of other institutions before conducting transactions.

Paragraph (c) of proposed section 248.4 identifies the time a customer relationship is established as the point at which a financial institution and a consumer enter into a continuing relationship. The examples in paragraph (c) clarify that, for customer relationships that are contractual in nature (including, for example, investment advisory relationships), a customer relationship is established when the consumer enters into the contract (whether in writing or orally) that is necessary to conduct the transaction in question. Thus, a customer relationship is established with a broker-dealer when a consumer executes a securities trade through the broker-dealer or opens a brokerage account with the broker-dealer under its procedures.[37] The examples further clarify that a consumer who opens an account with an introducing broker establishes a customer relationship with the introducing broker's clearing broker (that clears on a fully disclosed basis) at the same time. Similarly, when a consumer purchases investment company shares (in his or her own name) through a principal underwriter, the consumer establishes a customer relationship with the underwriter and the investment company. We request comment on whether there are different times at which customer relationships with brokers, dealers, investment companies, or investment advisers are established.

Notice to consumers. For consumers who do not establish a customer relationship, the initial notice may be provided at any point before the financial institution discloses nonpublic personal information to nonaffiliated third parties. As provided in paragraph (b) of the proposed rule, if the institution does not intend to disclose the information in question or intends to make only those disclosures that are authorized by one of the exceptions for, among other things, processing and servicing accounts or as required by law,[38] the institution is not required to provide the initial notice.

How to provide notice. Paragraph (d) of proposed section 248.4 sets out the rules governing how financial institutions must provide the initial notices. The general rule requires that the initial notice be provided so that each recipient can reasonably be expected to receive actual notice. The Commission invites comment on who should receive a notice in situations in which there is more than one party to an account.

The notice may be delivered in writing or, if the consumer agrees, electronically. Oral notices alone are insufficient. In the case of customers, the notice must be given in a way so that the customer may either retain it or access it at a later time.[39]

Examples of acceptable ways to deliver the notice include hand-delivering a copy of the notice, mailing a copy to the consumer's last known address, or sending it by electronic mail

[34] *See* proposed § 248.3(c).

[35] 17 CFR 240.10b–16.

[36] *See* Rule 382 of the New York Stock Exchange, Inc. (''NYSE'') Operation of Member Organizations, NYSE Guide (CCH) 3639–40 (1999); Rule 3230 of the National Association of Securities Dealers (''NASD'') Conduct Rules, NASD Manual (CCH) 4922 (1999).

[37] As indicated in the examples under the definition of a customer relationship, we do not believe that a customer relationship exists when a broker-dealer executes a securities trade for a consumer as an accommodation or to liquidate securities on a one-time basis, *i.e.*, when there is no expectation of further transactions.

[38] *See* proposed §§ 248.10 and 248.11.

[39] The requirement that the notice be given in a manner permitting access at a later time does not preclude a financial institution from changing its privacy policy. *See* proposed § 248.8(c). Rather the requirement is intended to provide that a customer will be able to access the most recently adopted privacy policy.

to a consumer who obtains a financial product or service from the institution electronically. It would not be sufficient to provide only a posted copy of the notice in a lobby. Similarly, it would not be sufficient to provide the initial notice only on a Web page, unless the consumer is required to access that page to obtain the product or service in question. Electronic delivery generally should be in the form of electronic mail to ensure that a consumer actually receives the notice. In those circumstances in which a consumer is in the process of conducting a transaction over the Internet, electronic delivery also may include posting the notice on a Web page as described above. If a financial institution and consumer enter into a contract for a financial product or service over the telephone, the institution may provide the consumer with the option of receiving the initial notice after providing the product or service in order not to delay the transaction. We invite comment on the regulatory burden of providing the initial notices and on the methods financial institutions anticipate using to provide the notices. We also request comment on whether there are additional circumstances in which an institution should be permitted to provide notices within a reasonable time after the customer relationship is established.

Section 248.5 Annual Notice to Customers Required

Section 503 of the G–L–B Act requires a financial institution to provide notices of its privacy policies and practices at least annually to its customers. The proposed rules implement this requirement by requiring a clear and conspicuous notice that accurately reflects the current privacy policies and practices to be provided at least once during any period of twelve consecutive months. The rules governing how to provide an initial notice also apply to annual notices.

Section 503(a) of the G–L–B Act requires that the annual notices be provided ''during the continuation'' of a customer relationship. To implement this requirement, the proposed rules state that a financial institution is not required to provide annual notices to a customer with whom it no longer has a continuing relationship.[40] The examples that follow this general rule provide guidance on when there no longer is a continuing relationship for purposes of the rules.

These include, for instance, a brokerage account that has been closed or an investment advisory contract that has been terminated. In addition, an investment company shareholder who has redeemed all of his or her shares or is determined to be a lost securityholder under rule 17a–24 under the Exchange Act would no longer be considered to be a customer of the investment company.[41]

The Commission invites comment generally on whether the examples provided in proposed section 248.5 are adequate and whether there are other situations in which an individual may have an account with an institution but the customer relationship has ended. We also invite comment on the regulatory burden of providing the annual notices and on the methods financial institutions anticipate using to provide the notices.

Section 248.6 Information To Be Included in Initial and Annual Notices of Privacy Policies and Practices

Section 503 of the G–L–B Act identifies the items of information that must be included in a financial institution's initial and annual notices. Section 503(a) of the G–L–B Act establishes the general requirement that a financial institution must provide customers with a notice describing the institution's policies and practices with respect to, among other things, disclosing nonpublic personal information to affiliates and nonaffiliated third parties. Section 503(b) of the Act identifies certain elements that the notice must address.

The required content is the same for both the initial and annual notices of privacy policies and practices. While the information contained in the notices must be accurate as of the time the notices are provided, a financial institution may prepare its notices based on current and anticipated policies and practices.

The information to be included is as follows:

1. *Categories of nonpublic personal information that a financial institution may collect.* Section 503(b)(2) requires a financial institution to inform its customers about the categories of nonpublic personal information that the institution collects. The proposed rules implement this requirement in section 248.6(a)(1) and provide an example of how to comply with this requirement that focuses the notice on the source of the information collected. As noted in the example, a financial institution will satisfy this requirement if it categorizes the information according to the sources, such as application information, transaction information, and consumer report information. Financial institutions may provide more detail about the categories of information collected but are not required to do so.

2. *Categories of nonpublic personal information that a financial institution may disclose.* Section 503(a)(1) of the G–L–B Act requires the financial institution's initial and annual notice to provide information about the categories of nonpublic personal information that may be disclosed either to affiliates or nonaffiliated third parties. The proposed rules implement this requirement in proposed section 248.6(a)(2). The examples of how to comply with this rule focus on the content of information to be disclosed. A financial institution may satisfy this requirement by categorizing information according to source and providing examples of the content of the information. These categories might include application information (such as assets, income, investment goals, and investment risk tolerance), identifying information (such as name, address, and social security number), transaction information (such as information about account activity, account balances, securities positions, and securities purchases and sales), and information from consumer reports (such as credit history).

Financial institutions may choose to provide more detailed information in the initial and annual notices. Conversely, if a financial institution does not disclose, and does not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, its initial and annual notices may simply state this fact without further elaboration about categories of information disclosed.

3. *Categories of affiliates and nonaffiliated third parties to whom a financial institution discloses nonpublic personal information.* As previously noted, section 503(a) of the G–L–B Act includes a general requirement that a financial institution provide a notice to its customers of the institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties. Section 503(b) states that the notice

[40] Proposed § 248.5(c).

[41] 17 CFR 240.17a–24. This rule requires recordkeeping transfer agents to file reports with the Commission on lost securityholder accounts. A ''lost securityholder'' is a securityholder to whom correspondence has been sent at the address contained in the transfer agent's master securityholder file, that has been returned as undeliverable and for whom the transfer agent has not received information regarding a new address. 17 CFR 240.17a–24(b). The definition permits the transfer agent to deem the securityholder lost as of the date the item has been returned as undeliverable after having been re-sent.

required by section 503(a) must include certain specified items. Among those is the requirement, set out in section 503(b)(1), that a financial institution inform its customers about its policies and practices with respect to disclosing nonpublic personal information to nonaffiliated third parties. We believe that sections 503(a) and 503(b) of the G–L–B Act require a financial institution's notice to address disclosures of nonpublic personal information to both affiliates and nonaffiliated third parties.

The proposed rules implement this notice requirement in section 248.6(a)(3). The example states that a financial institution will adequately categorize the affiliates and nonaffiliated third parties to whom it discloses nonpublic personal information about consumers if it identifies the types of businesses in which they engage. Types of businesses may be described by general terms, such as financial products or services, if the financial institution provides examples of the significant lines of businesses of the recipient, such as retail banking, mortgage lending, life insurance, or securities brokerage.

The G–L–B Act does not require a financial institution to list the categories of persons to whom information may be disclosed under any of the exceptions set out in proposed sections 248.10 and 248.11. The proposed rules state that a financial institution is required only to inform consumers that it makes disclosures as permitted by law to nonaffiliated third parties in addition to those described in the notice. We invite comment on whether such a notice would be adequate.

If a financial institution does not disclose, and does not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, its initial and annual notices may simply state this fact without further elaboration about categories of third parties.

4. *Information about former customers.* Section 503(a)(2) of the G–L–B Act requires the financial institution's initial and annual privacy notices to include the institution's policies and practices with respect to disclosing nonpublic personal information of persons who have ceased to be customers of the institution. Section 503(b)(1)(B) requires that this information be provided with respect to information disclosed to nonaffiliated third parties.

We have concluded that sections 503(a)(2) and 503(b)(1)(B) require a financial institution to include in the initial and annual notices the institution's policies and practices with respect to sharing information about former customers with all affiliates and nonaffiliated third parties. This requirement is set out in the proposed rules at section 248.6(a)(4). This provision does not require a financial institution to provide a notice to a former customer before sharing nonpublic personal information about that former customer with an affiliate.[42]

5. *Information disclosed to service providers.* Section 502(b)(2) of the G–L–B Act permits a financial institution to disclose nonpublic personal information about a consumer to a nonaffiliated third party for the purpose of the third party performing services for the institution, including marketing financial products or services under a joint agreement between the financial institution and at least one other financial institution. In this case, a consumer has no right to opt out, but the financial institution must inform the consumer that it will be disclosing the information in question unless the service falls within one of the exceptions listed in section 502(e) of the Act.

The proposed rules implement these provisions, in section 248.6(a)(5), by requiring that, if a financial institution discloses nonpublic personal information to a nonaffiliated third party under the exception for service providers and joint marketing, the institution is to include in the initial and annual notices a separate description of the categories of information that are disclosed and the categories of third parties providing the services. A financial institution may comply with these requirements by providing the same level of detail in the notice as is required to satisfy proposed sections 248.6(a)(2) and (3).

6. *Right to opt out.* As previously noted, sections 503(a)(1) and 503(b)(1) of the G–L–B Act require a financial institution to provide customers with a notice of its privacy policies and practices concerning, among other things, disclosing nonpublic personal information consistent with section 502 of the Act. Proposed rule 248.6(a)(6) implements this section by requiring the initial and annual notices to explain the right to opt out of disclosures of nonpublic personal information to nonaffiliated third parties, including the methods available to exercise that right.

7. *Disclosures made under the FCRA.* Section 503(b)(4) of the G–L–B Act requires a financial institution's initial and annual notice to include the disclosures required, if any, under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (''FCRA'').[43] Section 603(d)(2)(A)(iii) excludes from the definition of ''consumer report'' (and, therefore, the protections provided under the FCRA for information contained in those reports) the communication of certain consumer information among affiliated entities if the consumer is notified about the disclosure of that information and given an opportunity to opt out of the information sharing. The information that can be shared among affiliates under this provision includes, for instance, information from consumer reports and applications for financial products or services. In general, this information represents personal information provided directly by the consumer to the institution, such as income and social security number, in addition to information contained within credit bureau reports.

The proposed rules implement section 503(b)(4) of the G–L–B Act by including the requirement that a financial institution's initial and annual notice include any disclosures a financial institution makes under section 603(d)(2)(A)(iii) of the FCRA.[44]

8. *Confidentiality, security, and integrity.* Section 503(a)(3) of the G–L–B Act requires the initial and annual notices to provide information about a financial institution's policies and practices with respect to protecting the nonpublic personal information of consumers. Section 503(b)(3) of the Act requires the notices to include the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information, in accordance with section 501 (which requires the Commission to establish standards governing the administrative, technical, and physical safeguards of customer information).

The proposed rules implement these provisions by requiring a financial institution to include in the initial and annual notices the institution's policies and practices with respect to protecting the confidentiality, security, and integrity of nonpublic personal information.[45] The example in the proposed rules states that a financial institution may comply with the requirement as it concerns confidentiality and security if the institution explains matters such as who has access to the information and the

[42] An institution that intends to share nonpublic personal information about a former customer with a nonaffiliated third party would be required to provide the customer with notice and opportunity to opt out before sharing the information with the third party.

[43] 15 U.S.C. 1681a(d)(2)(A)(iii).

[44] *See* proposed § 248.6(a)(7).

[45] *See* proposed § 248.6(a)(8).

circumstances under which the information may be accessed. The information about integrity should focus on the measures the institution takes to protect against reasonably anticipated threats or hazards. The proposed rules do not require a financial institution to provide technical or proprietary information about how it safeguards consumer information.[46]

Section 248.7 Limitation on Disclosure of Nonpublic Personal Information About Consumers to Nonaffiliated Third Parties

Section 502(a) of the G–L–B Act generally prohibits a financial institution from sharing nonpublic personal information about a consumer with a nonaffiliated third party unless the institution provides the consumer with a notice of the institution's privacy policies and practices. Section 502(b) further requires that the financial institution provide the consumer with a clear and conspicuous notice that the consumer's nonpublic personal information may be disclosed to nonaffiliated third parties, that the consumer be given an opportunity to opt out of that disclosure, and that the consumer be informed of how to opt out.

Section 248.7 of the proposed rules implements these provisions. Paragraph (a)(1) of section 248.7 sets out the criteria that a financial institution must satisfy before disclosing nonpublic personal information to nonaffiliated third parties. As stated in the text of the proposed rules, these criteria apply to direct and indirect disclosures through an affiliate. We invite comment on how the right to opt out should apply in the case of joint accounts. Should, for instance, a financial institution require all parties to an account to opt out before the opt out becomes effective? If not and only one of the parties opts out, should the opt out apply only to information about the party opting out or should it apply to information about all parties to the account? We also request comment on how the opt out right should apply to an investment adviser who manages a trust account on behalf of multiple beneficiaries.

Paragraph (a)(2) defines ''opt out'' in a way that incorporates the exceptions to the right to opt out stated in proposed sections 248.9, 248.10, and 248.11, which permit disclosures of nonpublic personal information to nonaffiliated third parties without first providing the initial privacy notice and giving the consumer the right to opt out.

The proposed rules implement the requirement that a consumer be given an opportunity to opt out before information is disclosed by requiring that the opportunity be reasonable. The examples that follow the general rule provide guidance in situations involving notices that are mailed and notices that are provided in connection with isolated transactions. In the former case, a consumer will be considered to have a reasonable opportunity to opt out if the financial institution provides 30 days in which to opt out. In the latter case, an opportunity will be reasonable if the consumer must decide as part of the transaction whether to opt out before completing the transaction. We invite comment on whether 30 days is a reasonable opportunity to opt out in the case of notices sent by mail, and on whether an example in the context of transactions conducted using an electronic medium would be helpful.

The requirement that a consumer have a reasonable opportunity to opt out does not mean that a consumer forfeits that right once the opportunity lapses. The consumer always has the right to opt out (as discussed further in proposed section 248.8, below). However, if an individual does not exercise that opt out right when first presented with an opportunity, the financial institution would be permitted to disclose nonpublic personal information to nonaffiliated third parties during the period of time before it implements the consumer's opt out direction.

Paragraph (b) of proposed section 248.7 clarifies that the right to opt out applies regardless of whether a consumer has established a customer relationship with a financial institution. As noted above, all customers are consumers under the proposed rules. Thus, the fact that a consumer establishes a customer relationship with a financial institution does not change the institution's obligations to comply with the requirements of proposed section 248.7(a) before sharing nonpublic personal information about that consumer with nonaffiliated third parties. This also applies in the context of a consumer who had a customer relationship with a financial institution but then terminated that relationship. Paragraph (b) also clarifies that the consumer protections afforded by paragraph (a) of proposed section 248.7 apply to all nonpublic personal information collected by a financial institution, regardless of when collected. Thus, if a consumer elects to opt out of information sharing with nonaffiliated third parties, that election applies to all nonpublic personal information about that consumer in the financial institution's possession, regardless of when the information is obtained.

Paragraph (c) of proposed section 248.7 states that a financial institution may, but is not required to, provide consumers with the option of a partial opt out in addition to the opt out required by this section. This could enable a consumer to limit, for instance, the types of information disclosed to nonaffiliated third parties or the types of recipients of the nonpublic personal information about that consumer. If the partial opt out option is provided, a financial institution must state this option in a way that clearly informs the consumer about the choices available and the resulting consequences.

Section 248.8 Form and Method of Providing Opt Out Notice to Consumers

Paragraph (a) of proposed section 248.8 requires that any opt out notice provided by a financial institution pursuant to proposed section 248.7 be clear and conspicuous, and accurately explain the right to opt out. The notice must inform the consumer that the institution may disclose nonpublic personal information to nonaffiliated third parties, state that the consumer has a right to opt out, and provide the consumer with a reasonable means by which to opt out.

The examples that follow the general rule state that a financial institution will adequately provide notice of the right to opt out if it identifies the categories of information that may be disclosed and the categories of nonaffiliated third parties to whom the information may be disclosed and explains that the consumer may opt out of those disclosures. A financial institution that plans to disclose only limited types of information or to only a specific type of nonaffiliated third party may provide a correspondingly narrow notice to consumers. However, to minimize the number of opt out notices a financial institution must provide, the institution may wish to base its notices on current and anticipated information sharing plans. A new opt out notice is not required for disclosures to different types of nonaffiliated third parties or of different types of information, provided that the most recent opt out notice is sufficiently broad to cover the entities or information in question. A financial institution also need not provide subsequent opt out notices when a consumer establishes a new type of customer relationship with that financial institution, unless the

[46] The proposed rules require brokers, dealers, investment companies, and registered investment advisers to adopt policies and procedures relating to administrative, technical, and physical safeguards (*see* proposed § 248.30).

institution's opt out policies differ based on the type of customer relationship.

The examples suggest several ways in which a financial institution may provide reasonable means to opt out, including check-off boxes, reply forms, and electronic mail addresses. A financial institution does not provide a reasonable means to opt out if the only means provided is for consumers to send their own letters to the institution to exercise their right, although an institution may honor such a letter if received. We also invite comment on whether a financial institution that provides its notice electronically also should be required to provide an electronic means to opt out.

Paragraph (b) applies the same rules to delivery of the opt out notice that apply to delivery of the initial and annual notices. In addition, paragraph (b) clarifies that the opt out notice may be provided together with, or on the same form as, the initial and annual notices. However, if the opt out notice is provided after the initial notice, a financial institution must provide a copy of the initial notice along with the opt out notice. If a financial institution and consumer orally agree to enter into a customer relationship, the institution may provide the opt out notice within a reasonable time thereafter if the consumer agrees. We invite comment on whether the rules should specify the time by which the notice must be given.

Paragraph (c) sets out the rules governing a financial institution's obligations in the event the institution changes its disclosure policies. As stated in that paragraph, a financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless the institution first provides a revised notice and new opportunity to opt out. The institution must wait a reasonable period of time before disclosing information according to the terms of the revised notice in order to afford the consumer a reasonable opportunity to opt out. A financial institution must provide a consumer the revised notice of its policies and practices and opt out notice by using the means permitted for providing the initial notice and opt out notice to that consumer under section 248.4(d) and section 248.8(b), respectively, which require that the notices be given in a manner so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form.

Paragraph (d) states that a consumer has the right to opt out at any time. We considered whether to include a time limit by which financial institutions must effectuate a consumer's opt out, but decided that the wide variety of practices of financial institutions made one limit inappropriate. Instead, the proposed rules require a financial institution to stop sharing information as soon as reasonably practicable. We request comment on whether the rules should specify a time within which an institution must stop sharing information, and if so, what the time period should be.

Paragraph (e) states that an opt out will continue until a consumer revokes it. The rules require that such revocation be in writing, or, if the consumer has agreed, electronically.

We invite comment on the likely burden of complying with the requirement to provide opt out notices, the methods financial institutions anticipate using to deliver the opt out notices, and the approximate number of opt out notices they expect to deliver and process.

Section 248.9 Exception To Opt Out Requirements for Service Providers and Joint Marketing

Section 502(b)(2) of the G–L–B Act creates an exception to the opt out rules for the disclosure of information to a nonaffiliated third party for its use to perform services for, or functions on behalf of, the financial institution, including the marketing of the financial institution's own products or services or financial products or services offered under a joint agreement between two or more financial institutions. A consumer will not have the right to opt out of disclosing nonpublic personal information about the consumer to nonaffiliated third parties under these circumstances, if the financial institution satisfies certain requirements.

First, the institution must, as stated in section 502(b)(2), ''fully disclose'' to the consumer that it will provide this information to the nonaffiliated third party before the information is shared. This disclosure could appear in the initial notice required by section 248.4. We invite comment on whether the proposed rules appropriately implement the ''fully disclose'' requirement in section 502(b)(2).

Second, the financial institution must enter into a contract with the third party that requires the third party to maintain the confidentiality of the information. This contract should be designed to ensure that the third party (a) will maintain the confidentiality of the information at least to the same extent as is required for the financial institution that discloses it, and (b) will use the information solely for the purposes for which the information is disclosed or as otherwise permitted by sections 248.10 and 248.11 of the proposed rules.

The G–L–B Act allows the Commission to impose requirements on the disclosure of information under the exception for service providers beyond those imposed in the statute. We have not done so in the proposed rules, but invite comment on whether additional requirements should be imposed, and, if so, what those requirements should address. We also invite comments on any other requirements that would be appropriate to protect a consumer's financial privacy, and on whether the rules should provide examples of the types of joint agreements that are covered.

Section 248.10 Exceptions for Processing and Servicing Transactions

Section 502(e) of the G–L–B Act creates exceptions to the requirements that apply to the disclosure of nonpublic personal information to nonaffiliated third parties. Paragraph (1) of that section sets out certain exceptions for disclosures made, generally speaking, in connection with the administration, processing, servicing, and sale of a consumer's account.

Paragraph (a) of proposed section 248.10 sets out those exceptions, making only stylistic changes to the statutory text that are intended to make the exceptions easier to read. Paragraph (b) sets out the definition of ''necessary to effect, administer, or enforce'' that is contained in section 509(7) of the G–L–B Act, making only stylistic changes intended to clarify the definition.

The exceptions set out in proposed section 248.10, and the exceptions discussed in proposed section 248.11, below, do not affect a financial institution's obligation to provide initial notices of its privacy policies and practices prior to the time it establishes a customer relationship and annual notices thereafter. Those notices must be provided to all customers, even if the institution intends to disclose the nonpublic personal information only under the exceptions in proposed section 248.10.

Section 248.11 Other Exceptions To Opt Out Requirements

As noted above, section 502(e) of the G–L–B Act contains several exceptions to the requirements that otherwise would apply to the disclosures of nonpublic personal information to nonaffiliated third parties. Proposed section 248.11 sets out those exceptions that are not made in connection with

the administration, processing, servicing, or sale of a consumer's account, and makes stylistic changes intended to clarify the exceptions.

One of the exceptions stated in proposed section 248.11 is for disclosures made with the consent or at the direction of the consumer, provided the consumer has not revoked the consent. Following the list of exceptions is an example of consent in which a consumer consents to having a broker or investment adviser confirm the amount of assets in the customer's account to a nonaffiliated mortgage lender so that the lender can evaluate the customer's application for a loan. Consent in such a situation would enable the financial institution to make the disclosure to the third party without first providing the initial notice required by section 248.4 or the opt out notice required by section 248.7, but the disclosure must not exceed the purposes for which consent was given. The example also states that a consumer may revoke consent at any time by exercising the right to opt out of future disclosures. We invite comment on whether safeguards should be added to the exception for consent in order to minimize the potential for consumer confusion. Such safeguards might include, for instance, a requirement that consent be written or that it be indicated on a separate line in a relevant document or on a distinct Web page.

Section 248.12 Limits on Redisclosure and Reuse of Information

Section 248.12 of the proposed rules implements the Act's limitations on redisclosure and reuse of nonpublic personal information about consumers. Section 502(c) of the Act provides that a nonaffiliated third party that receives nonpublic personal information from a financial institution shall not, directly or indirectly through an affiliate, disclose the information to any person that is not affiliated with either the financial institution or the third party, unless the disclosure would be lawful if made directly by the financial institution. Paragraph (a)(1) sets out the Act's redisclosure limitation as it applies to a financial institution that receives information from another nonaffiliated financial institution. Paragraph (b)(1) mirrors the provisions of paragraph (a)(1), but applies the redisclosure limits to any nonaffiliated third party that receives nonpublic personal information from a financial institution.

The Act appears to place the institution that receives the information into the shoes of the institution that disclosed the information for purposes of determining whether redisclosures by the receiving institution are ''lawful.'' Thus, the Act appears to permit the receiving institution to redisclose the information to (i) an entity to whom the original transferring institution could disclose the information pursuant to one of the exceptions in section 248.9, 248.10, or 248.11, or (ii) an entity to whom the original transferring institution could have disclosed the information as described under its notice of privacy policies and practices, unless the consumer has exercised the right to opt out of that disclosure. Because a consumer can exercise the right to opt out of a disclosure at any time, the Act may effectively preclude third parties that receive information to which the opt out right applies from redisclosing the information, except under one of the exceptions in section 248.9, 248.10, or 248.11. We invite comment on whether the rules should require a financial institution that discloses nonpublic personal information to a nonaffiliated third party to develop policies and procedures to ensure that the third party complies with the limits on redisclosure of that information.

Sections 502(b)(2) and 502(e) (as implemented by sections 248.9, 248.10, and 248.11 of the proposed rules) describe when a financial institution may disclose nonpublic personal information without providing the consumer with the initial privacy notice and an opportunity to opt out, but those exceptions apply only when the information is used for the specific purposes set out in those sections. Paragraph (a)(2) of proposed section 248.12 clarifies this limitation on reuse as it applies to financial institutions. Paragraph (a)(2) provides that a financial institution may use nonpublic personal information about a consumer that it receives from a nonaffiliated financial institution in accordance with an exception under section 248.9, 248.10, or 248.11 only for the purpose of that exception. Paragraph (b)(2) applies the same limits on reuse to any nonaffiliated third party that receives nonpublic personal information from a financial institution. The example in (b)(3) clarifies that a nonaffiliated transfer agent who receives nonpublic personal information from a financial institution may not directly or indirectly disclose the information to a nonaffiliated third party of the institution and the transfer agent unless the institution could lawfully share the information with that party.

We invite comments on the meaning of the word ''lawful'' as that term is used in section 502(c). We specifically solicit comment on whether it would be lawful for a nonaffiliated third party to disclose information under the exception provided in proposed section 248.9 of the rules. Under that exception, a financial institution must comply with certain requirements before disclosing information to a nonaffiliated third party. Given that the statute and proposed rules impose those requirements on the financial institution that makes the initial disclosure, we invite comment on whether subsequent disclosures by the third party could satisfy the requirement that those disclosures be lawful when the financial institution is not party to the subsequent disclosure.

Section 248.13 Limits on Sharing of Account Number Information for Marketing Purposes

Section 502(d) of the G–L–B Act prohibits a financial institution from disclosing, other than to a consumer reporting agency, account numbers or similar forms of access numbers or access codes for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or marketing through electronic mail to the consumer. Proposed section 248.13 applies this statutory prohibition to disclosures made directly or indirectly by a financial institution.

We note that there is no exception in Title V to the flat prohibition established by section 502(d). The conference report for the G–L–B Act encourages the Commission (and the Agencies) to adopt an exception to section 502(d) to permit disclosures of account numbers in limited circumstances. It states:

> In exercising their authority under section 504(b) [which vests the Agencies with authority to grant exceptions to section 502(a)–(d) beyond those set out in the statute], the agencies and authorities described in section 504(a)(1) may consider it consistent with the purposes of this subtitle to permit the disclosure of customer account numbers or similar forms of access numbers or access codes in an encrypted, scrambled, or similarly coded form, where the disclosure is expressly authorized by the customer and is necessary to service or process a transaction expressly requested or authorized by the customer. [47]

We have not proposed an exception to the prohibition of section 502(d) because of the risks associated with third parties' direct access to a consumer's account. We seek comment

[47] H. Rep. No. 434, 106th Cong., 1st Sess. at 173 (1999).

on whether an exception to the section 502(d) prohibition that permits third parties access to account numbers is appropriate, the circumstances under which an exception would be appropriate, and how such an exception should be formulated to provide consumers with adequate protection. In addition, we invite comment on whether a consumer ought to be able to consent to the disclosure of his or her account number, notwithstanding the general prohibition in section 502(d) and, if so, what standards should apply. We also seek comment on whether section 502(d) prohibits the disclosure by a financial institution to a marketing firm of encrypted account numbers if the financial institution does not provide the marketer the key to decrypt the number.

Section 248.14 Protection of Fair Credit Reporting Act

Paragraph (c) of section 506 states that, except for the amendments noted regarding rulemaking authority, nothing in Title V is to be construed to modify, limit, or supersede the operation of the FCRA, and no inference is to be drawn on the basis of the provisions of Title V whether information is transaction or experience information under section 603 of the FCRA. Proposed section 248.14 implements section 506(c) of the G–L–B Act by restating the statute, making only minor clarifying changes.

Section 248.15 Relation to State Laws

Section 507 of the G–L–B Act provides that Title V does not preempt any State law that provides greater protections than are provided by Title V. Determinations of whether a State law or Title V provides greater protections are to be made by the Federal Trade Commission (''FTC'') after consultation with the agency that regulates either the party filing a complaint or the financial institution about whom the complaint was filed. Determinations of whether State or Federal law afford greater protections may be initiated by any interested party or on the FTC's own motion.

Proposed section 248.15 is substantively identical to section 507, noting that the proposed rules (like the statute) do not preempt State laws that provide greater protection for consumers than does the regulation.

Section 248.16 Effective Date; Transition Rule

Section 510 of the G–L–B Act states that, as a general rule, the relevant provisions of Title V take effect six months after the date on which rules are required to be prescribed. However, section 510(1) authorizes the Commission (and the Agencies) to prescribe a later date in the rules enacted pursuant to section 504.

Proposed section 248.16(a) provides an effective date of November 13, 2000. This provision is premised on adoption of a final rule within the time frame prescribed by section 504(a)(3). We intend to provide at least six months after the adoption of a final rule for financial institutions to bring their policies and procedures into compliance with the requirements of the final rule. We invite comment on whether six months after adoption of final rules is sufficient to enable financial institutions to comply with the rules.

Proposed section 248.16(b) provides a transition rule for consumers who were customers as of the effective date of the rules. Since those customer relationships already will have been established as of the rules' effective date (thereby making it inappropriate to require a financial institution to provide those customers with a copy of the institution's initial notice at the time of establishing a customer relationship), the rules require instead that the initial notice be provided within 30 days of the effective date. We invite comment on whether 30 days is enough time to permit a financial institution to deliver the required notices, bearing in mind that the G–L–B Act contemplates at least a six-month delayed effective date from the date the rules are adopted.

If a financial institution intends to disclose nonpublic personal information about someone who was a consumer before the effective date, the institution must provide the notices required by sections 248.4 and 248.7 and provide a reasonable opportunity to opt out before the effective date. If, in this instance, the institution already is disclosing information about such a consumer, it may continue to do so without interruption until the consumer opts out, in which case the institution must stop sharing nonpublic personal information about that consumer with nonaffiliated third parties as soon as reasonably practicable. We request comment on whether the proposed rule should specify a time within which the institution must stop sharing information, and if so, what the time period should be.

Section 248.30 Procedures To Safeguard Customer Information and Records

Section 501 of the G–L–B Act directs the Commission (and the Agencies) to establish appropriate standards for financial institutions relating to administrative, technical and physical safeguards to protect customer records and information. Proposed section 248.30 implements this section by requiring every broker, dealer, investment company, and registered investment adviser to adopt policies and procedures to address the safeguards described above. Consistent with the Act, the proposed rule further requires that the policies and procedures be reasonably designed to: (i) Insure the security and confidentiality of customer records and information; (ii) protect against any anticipated threats or hazards to the security or integrity of customer records and information; and (iii) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

We have not prescribed specific policies or procedures that financial institutions must adopt. Rather, we believe it more appropriate for each institution to tailor its policies and procedures to its own systems of information gathering and transfer and the needs of its customers. We request comment on whether the proposed standards should be more specific, and if so, what specifications would be appropriate for particular financial institutions.

III. General Request for Comments

The Commission requests comment on the proposed rules and suggestions for additional examples that may be appropriate to include in the rules. We also solicit comment on whether the inclusion of examples in this part is appropriate. Are there alternative methods to offer guidance of the concepts furnished by the examples?

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[48] we also request information regarding the potential effect of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

The Commission strives to draft its rules according to principles outlined in its Plain English Handbook.[49] We invite your comments on how to make the proposed rule more consistent with those principles and easier to understand.

[48] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[49] Office of Investor Education and Assistance, U.S. Securities and Exchange Commission, A Plain English Handbook (1998) (available on the Commission's web site at <http://www.sec.gov>).

IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules and understands that the proposed rules may impose costs on brokers, dealers, investment companies, and registered investment advisers. Nevertheless, the proposed rules implement the privacy provisions of Title V and, we believe, impose no costs in addition to those that would result from compliance with the G–L–B Act.

We believe that the proposed requirements to provide opt out notices and to protect customer information will benefit consumers and customers by protecting the privacy of their nonpublic personal information. In addition, the proposed requirements to provide initial and annual notices will allow customers to compare the privacy policies of financial institutions.

We also believe that the proposed rules will provide greater certainty to the private sector on how to comply with the G–L–B Act because they are consistent with and comparable to the rules proposed by the Agencies. The examples in the proposed rules also should provide guidance on how the rules will be enforced with respect to brokers, dealers, investment companies, and registered investment advisers. Finally, in order to reduce compliance burdens, the proposed rules would allow financial institutions flexibility to distribute notices and to adopt policies and procedures to protect customer information that are best suited to the institution's business and needs.

We estimate that approximately 5500 broker-dealers, 4300 investment companies and 8100 registered investment advisers would be required to comply with the proposed rules. In the first year after the rules are adopted, these institutions would be required to comply with the following requirements: (i) Prepare notices describing the institution's privacy policies; (ii) provide an initial privacy notice and opt out form to each consumer; (iii) provide an initial privacy notice to each new customer (who did not receive a notice when he or she was a consumer); (iv) provide an annual privacy notice to each existing customer; (v) adopt policies and procedures that address the protection of customer information and records. After the first year, institutions would be required to revise notices only to reflect changes in their privacy policies. Similarly, institutions would have to revise their policies and procedures on safeguarding customer information as appropriate to ensure the protection of the information.

Under the proposed rules, an initial and annual notice could be the same.[50] Many broker-dealers, investment companies, and registered investment advisers currently provide notice of their privacy policies to consumers and customers.[51] Thus, some of these institutions would be required to draft privacy notices, while others would have to review and revise their notices for compliance with the proposed rules.

The amount of time required for each institution to prepare (or revise) its privacy policy notices will vary depending on the extent to which (i) the institution shares information and (ii) the institution's sharing policy differs for certain consumers or customers.[52] We assume that while broker-dealers and investment companies share nonpublic personal information about consumers or customers with their affiliates (or as permitted under one of the exceptions discussed above), few, if any, share information with nonaffiliated third parties.[53] In addition, we assume that most investment advisers do not share the information with any third parties.[54] Based on these assumptions, we estimate that an investment adviser would require, on average, about 5 hours, and a broker-dealer or investment company would require from 5 to over 100 hours, with an average of about 40 hours, to prepare (or revise) its privacy notice. Assuming that an investment adviser would spend on average $615 [55] to draft a notice, and a broker-dealer or investment company would spend on average $4920,[56] we estimate that the total one-time cost to the industry of drafting privacy notices would be approximately $53.2 million.[57]

As noted above, we assume that broker-dealers, investment companies, and registered investment advisers do not share nonpublic personal information with nonaffiliated third parties. Therefore, those institutions would not be required to provide consumers an initial notice or opportunity to opt out. We assume that those institutions generally will include initial and annual privacy notices to customers with disclosure documents or account statements that they currently receive.[58] These statements generally are assembled and sent by organizations that specialize in mailing and distribution. We estimate that the additional material might result in an increase in total annual distribution costs of $2.6 million for broker-dealers, investment companies, and registered investment advisers.[59]

We understand that most if not all broker-dealers, investment companies, and registered investment advisers have established some policies and procedures to protect customer information.[60] Each institution,

[50] *See* proposed § 248.6(a) (specifying the same content for initial and annual notices).

[51] *See e.g.,* Charles Schwab & Co., The Schwab Privacy Pledge & Notification (Sept. 23, 1999) (available at <http://www.schwab.com>); The Vanguard Group, Privacy Policy (available at <http://www.vanguard.com>).

[52] An institution that does not share information with affiliates or nonaffiliated third parties may simply state that fact without further discussion. *See* discussion regarding proposed section 248.6 above. An institution that has many affiliates and has different policies on sharing based on the affiliate or the customer is likely to require much more time to draft its notices.

[53] This assumption is based on staff conversations with representatives of the securities industry.

[54] *See* Association for Investment Management and Research, Standards of Practice Handbook 123, 125 (1996) (standard requires members to preserve the confidentiality of information communicated by clients or prospects, and procedures for compliance explain the ''simplest, most conservative, and most effective'' way to comply is to avoid disclosing any information received from a client except to authorized fellow employees who also work for the client).

[55] For purposes of the Paperwork Reduction Act, Commission staff has estimated that an investment adviser would require 4 hours of professional time (at $150 per hour) and 1 hour of clerical or administrative time (at $15 per hour) to prepare (or revise) its privacy notice, for a total of $615 ((4 × $150) + (1 × $15) = $615).

[56] For purposes of the Paperwork Reduction Act, Commission staff has estimated that a broker-dealer or investment company would require 32 hours of professional time and 8 hours of clerical or administrative time to prepare (or revise) its privacy notice, for a total of $4920 ((32 × $150) + (8 × $15) = $4920).

[57] This amount equals the sum of the costs for broker-dealers, investment companies, and investment advisers ((5500 + 4300) × $4920) + (8,100 × $615) = $53.2 million.

[58] Some customers receive all their correspondence electronically and could receive notices through the same medium. We believe that institutions would incur only minimal costs in transmitting notices to these customers electronically.

[59] The individual cost per institution would vary significantly depending on the number of the institution's customers. The estimate is based on an average additional cost per mailing of $0.02 for 130.7 million investor accounts. The number of investor accounts assumes there are 53 million brokerage accounts, 77.3 million individual investment company shareholders (*see* Investment Company Institute, 1999 Mutual Fund Fact Book 41 (May 1999)), and 400,000 customers of investment advisers. The estimated number of accounts may be significantly higher than the actual number because we are unable to estimate the number of individual accounts used for personal, family, or household purposes. *See* proposed § 248.1(b).

[60] *See* Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Securities Act Release No. 7288 (May 9, 1996) [61 FR 24644, 24647 (May 15, 1996)] (advising broker-dealers, transfer agents, and investment advisers to take reasonable precautions to ensure the integrity, confidentiality, and security of information about a customer's personal financial matters, and to tailor those precautions to the medium used (whether electronic means or paper) to ensure the information is reasonably secure from

however, would be likely to review and, as appropriate, revise its protection policies to assure compliance with the proposed rules. Assuming that each institution will on average require approximately 30 hours to review and revise its policies and procedures, the one-time cost to the industry to comply with the rules would be approximately $80.6 million.[61]

As discussed above, the privacy notices will allow customers of broker-dealers, investment companies, and registered investment advisers to compare the privacy policies of different institutions. This information is likely to result in some customers moving their accounts or relationships from one institution to another whose policies are better suited to the customer's needs. We are unable to estimate the number of customers who may make this transfer or the resulting economic impact on the industry. We do not believe, however, that customers would move their accounts from broker-dealers, investment companies, or investment advisers to a different type of financial institution (such as a bank), because we have no basis for assuming that the privacy policies adopted by 17,900 broker-dealers, investment companies, and registered investment advisers would not be sufficiently varied to address the needs of any customer.

We request comment on the costs and benefits of the proposed rules. We specifically request comment on the anticipated costs of drafting or revising privacy notices. We also request comment on the extent to which broker-dealers, investment companies, and registered investment advisers have established policies to protect customer information and the extent to which those policies would have to be revised to comply with the proposed rules. We invite comment on the cost of including privacy notices in other mailings, as well as the proportion of individual account holders who may receive notices electronically and the resulting costs or savings.

V. Paperwork Reduction Act

Certain provisions of the proposed rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Commission has submitted these provisions to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collections of information is: ''Regulation S–P.'' An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The proposed rules contain several disclosure requirements. The financial institutions must prepare and provide an initial notice to all current customers and all new customers at the time of establishing a customer relationship.[62] Subsequently, an annual notice must be provided to all customers at least once during a twelve-month period during the continuation of the customer relationship.[63] The initial notice and opt out notice must be provided to a consumer prior to disclosing nonpublic personal information to certain nonaffiliated third parties.[64] If a financial institution wishes to disclose information in a way that is inconsistent with the notices previously given to a consumer, the financial institution must provide consumers with revised notices (proposed § 248.8(c)).

The proposed regulation also contains consumer reporting requirements. In order for consumers to opt out, they must respond to the opt out notice.[65] At any time during their continued relationship, consumers have the right to change or update their opt out status.[66] As discussed above, we believe that most, if not all, financial institutions will not share nonpublic personal information about consumers with nonaffiliated third parties and will not have to provide opt out notices to consumers or customers. Thus, few, if any, consumers will need to respond to opt out notices. The Commission therefore estimates that the annual burden of responding to an opt out notice will be nominal. The Commission requests public comment on all aspects of the collections of information contained in this proposed regulation, including consumer responses to the opt out notice and consumer changes to their opt out status with a financial institution.

The initial and annual privacy notices are mandatory. The opt out notice is not mandatory for institutions that do not share nonpublic personal information with nonaffiliated third parties. The likely respondents are brokers, dealers, investment companies, and registered investment advisers. The required notices are not submitted to the Commission, and there is no assurance of confidentiality of the collections of information. The Commission estimates that approximately 5500 broker-dealers, 4300 investment companies, and 8100 registered investment advisers will respond to the proposed regulation.

Estimated average annual burden hours per respondent: 40.

Estimated average annual dollar burden per respondent: $145.00.[67]

Estimated number of respondents: 17,900.

Estimated total annual hour burden: 716,000 hours.

Estimated total annual dollar burden: $2.6 million.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549 with reference to File No. S7–6–00. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it

tampering or alteration); Investment Company Institute, Protection of Data Privacy in the Investment Company Industry (June 22, 1998) (available at <http://www.ici.org>) (investment companies and their managers often have written policies to ensure confidentiality of customer information).

[61] This estimate represents the costs of 30 hours of professional time (at $150 per hour) ((5500 + 4300 + 8100) × 30 × $150 = $80.6 million). Our estimates are based on staff conversations with representatives from the industry. We understand that many large institutions currently have comprehensive policies and procedures for protecting customer information and records. Although the policies of those institutions may need little revision, there may be many departments or other divisions that will participate in the review. Smaller institutions that need less comprehensive policies may devote more time to implementation or revision of their policies and procedures.

[62] Proposed § 248.4(a).

[63] Proposed § 248.5(a).

[64] Proposed §§ 248.7(a)(1)(i) and (ii).

[65] Proposed §§ 248.7(a)(2), (a)(3)(i), (c).

[66] Proposed §§ 248.8(d) and (e).

[67] This amount represents an estimated annual cost to include privacy notices in account statements or shareholder reports sent to customers.

within 30 days after publication. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–6–00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 5th Street, NW, Washington, DC 20549.

VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'' or ''analysis'') for proposed Regulation S–P in accordance with 5 U.S.C. 603. The following summarizes the IRFA. A copy of the IRFA may be obtained by contacting Penelope W. Saltzman, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0506.

The analysis explains that in general, Title V requires financial institutions to provide notice to consumers about the institution's privacy policies and practices. The statute also restricts the ability of a financial institution to share nonpublic personal information about consumers with nonaffiliated third parties, and allows consumers to prevent the institution from sharing nonpublic personal information about them with certain nonaffiliated third parties by ''opting out'' of the information sharing. In addition, Title V requires the Commission to establish appropriate standards for financial institutions subject to their jurisdiction to safeguard customer information and records.

Section 504 of the G–L–B Act authorizes the Commission and the Agencies to prescribe ''such regulations as may be necessary'' to carry out the purposes of Title V. As discussed in the analysis, we believe that by adopting rules implementing Title V that are consistent with and comparable to those of the Agencies, we will provide the private sector greater certainty on how to comply with the statute and clearer guidance on how the rules will be enforced with respect to the financial institutions subject to Title V that are under the Commission's jurisdiction.

The analysis explains that subject to certain exceptions, the proposed rules generally require that a financial institution provide all of its *customers* the following notices: (i) An initial privacy notice (before the customer relationship is established or, for existing customers, within 30 days after the rule's effective date); (ii) an opt out notice (before sharing the individual's nonpublic personal information with nonaffiliated third parties); and (iii) an annual privacy notice for the duration of the customer relationship.

The proposed rules also require a financial institution to provide its consumers an initial privacy notice and an opt out notice prior to disclosing the individual's nonpublic personal information with nonaffiliated third parties. If the institution does not intend to share such information about its consumers, then it need not provide a privacy or opt out notice.

The many exceptions to the general rules stated above are set forth in proposed sections 248.9, 248.10, and 248.11. The analysis notes that in cases in which a financial institution enters into a contract with a nonaffiliated third party to undertake joint marketing or to have the third party perform certain functions on behalf of the institution, no opt out notice must be given. In those cases, the institution must disclose to the consumer that it is providing the information and enter into a contract with the third party that restricts the third party's use of the information and requires the third party to maintain confidentiality of the information.

As discussed in the analysis, compliance requirements will vary depending, for example, on an institution's information sharing practices, whether the institution already has or discloses a privacy policy, and whether the institution already has established an opt-out mechanism. A financial institution would have to summarize its practices regarding its collection, sharing, and safeguarding of certain nonpublic personal information in its initial and annual notices. However, if the institution does not share that information (or shares only to the extent permitted under the exceptions), its privacy notice may be brief. We believe that a majority of financial institutions already have privacy policies in place as part of usual and customary business practices.[68] We have estimated that a financial institution would spend approximately 40 hours on average to prepare the privacy notices.

To minimize the burden and costs of distributing privacy policies, the proposed rule does not specify the method for distributing required notices. As discussed more fully in the analysis, a financial institution may include an initial privacy statement with other required disclosure statements, and may include an annual notice with periodic account statements. We estimate that the costs of distributing the notices will be minimal because an institution will include the notices in mailings or distributions that it already sends to consumers and customers.

The analysis notes that we understand that most, if not all, brokers, dealers, investment companies, and investment advisers currently do not share nonpublic personal information about consumers with nonaffiliated third parties except as would be consistent with one of the many exceptions in the proposed rules. We further understand that those institutions that do share information under one of the permitted exceptions generally have contract provisions that prohibit the third party's use of the information for purposes other than the purpose for which the information was shared. Thus we believe that, as a result of the proposed rules, most if not all financial institutions will not have to provide opt out notices to consumers or customers, and will not need to revise their contracts with nonaffiliated third parties to restrict those parties' use of information.

The analysis explains that the proposed rule requires every broker, dealer, investment company, and registered investment adviser to adopt policies and procedures reasonably designed to safeguard customer records and information. We believe that most, if not all, financial institutions already have policies and procedures to address the safety and confidentiality of consumer records and information. Nevertheless, financial institutions may review and revise their policies after the rules are adopted. The amount of time an institution will spend reviewing and revising its policies will depend, among other things, on the institution's current policies and its sharing practices. The rules do not specify the means by which institutions must ensure the safety of customer information and records in order to allow each institution to tailor its policies and procedures to its own systems of information gathering and transfer, and the needs of its customers. We have estimated that in the first year after the proposed rules are adopted, a financial institution would spend an average of 30 hours to adopt or revise its policies.

The proposed rules would affect all brokers, dealers, investment companies, and registered investment advisers, including small entities.[69] We estimate

[68] For example, investment advisers have fiduciary duties under state law that limit the ability of an investment adviser to share information with third parties. *See supra* note 4. This and other assumptions discussed in this paragraph also are based on staff conversations with representatives from the securities industry.

[69] For purposes of the Regulatory Flexibility Act, under the Exchange Act a small entity is a broker

that approximately 1000 out of 5500 brokers and dealers, 227 out of 4300 investment companies, and 1500 out of 8,100 registered investment advisers are small entities.

As noted in the analysis, the scope of the proposed regulation (pursuant to the G–L–B Act) is unique. Nevertheless, as discussed in greater detail in the analysis, there may be some overlap in certain circumstances with certain federal laws.

The analysis explains that the Reg. Flex. Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In addition to clarifying and simplifying the statutory requirements for all financial institutions, the proposed rule also provides substantial flexibility so that any financial institution, regardless of size, may tailor its practices to its individual needs. As discussed more fully in the analysis, we believe that an exception that would create different levels of protections for consumers based on the size of the institution with which they conduct business would not be consistent with the purposes of Title V. The Commission welcomes comment on any significant alternatives, consistent with the G–L–B Act, that would minimize the impact on small entities.

VII. Analysis of Effects on Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act[70] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules it adopts. We do not believe that the proposed rules will result in anti-competitive effects. The proposed rules, which implement Title V, apply to all broker-dealers, investment companies, and registered investment advisers. Each of these institutions would be required to provide initial and annual privacy notices to customers as well as initial notices and opt out forms to consumers if the institution shares nonpublic personal information about consumers with nonaffiliated third parties. These institutions also would be required to establish standards for protecting customer information and records.

Other financial institutions will be subject to substantially similar privacy notice and opt out requirements under rules proposed by other federal agencies.[71] Under the G–L–B Act, these agencies also are required to adopt rules addressing policies and procedures for protecting customer information.[72] Therefore, all financial institutions will have to bear the costs of implementing the proposed rules or substantially similar rules. Although these costs will vary among institutions, we do not believe that the costs will be significantly greater (as a proportion of the institutions' costs) for any particular institutions.

As noted above, some customers may move their accounts from one institution to another based on the institution's privacy policies. Thus, the proposed rules may promote competition among financial institutions based on customers' preferences regarding privacy policies. The rules do not, however, dictate the privacy policies of any financial institution. We have no basis for estimating the circumstances under which customers may move accounts. Thus, we cannot measure the potential benefits to competition or predict whether there may be anti-competitive effects with respect to institutions based on their privacy policies. We request comment on any anti-competitive effects of the proposed rules.

Section 3(f) of the Exchange Act,[73] and section 2(c) of the Investment Company Act[74] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Our analysis on competition is discussed above. We believe the proposed rules will have little effect on efficiency and capital formation. We have estimated that the proposed rules will result in additional costs for financial institutions. Nevertheless, we believe the additional costs are small enough that they will not affect the efficiency of these institutions. The rules will allow customers of financial institutions to compare privacy policies, which may result in customers choosing to do business with a financial institution based on its policies. This may result in greater efficiencies if customers make this choice before doing business with an institution instead of having to close an account after learning that an institution shares information in ways the customer does not want. We have no basis, however, for estimating the extent of these potential efficiencies. We request comment on these matters in connection with the proposed rule.

VIII. Statutory Authority

The Commission is proposing Regulation S–P under the authority set forth in section 504 of the G–L–B Act [15 U.S.C. 6804], sections 17 and 23 of the Exchange Act [15 U.S.C. 78q, 78w], sections 31 and 38 of the Investment Company Act [15 U.S.C. 80a–30(a), 80a–37], and sections 204 and 211 of the Investment Advisers Act [15 U.S.C. 80b–4, 80b–11].

List of Subjects in 17 CFR Part 248

Brokers, Dealers, Investment advisers, Investment companies, Privacy, Reporting and recordkeeping requirements.

Text of Proposed Rules

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations by adding a new part 248 to read as follows:

PART 248—REGULATION S–P: PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.

248.1 Purpose and scope.
248.2 Rule of construction.
248.3 Definitions.
248.4 Initial notice to consumers of privacy policies and practices required.
248.5 Annual notice to customers required.
248.6 Information to be included in initial and annual notices of privacy policies and practices.
248.7 Limitation on disclosure of nonpublic personal information about consumers to nonaffiliated third parties.
248.8 Form and method of providing opt out notice to consumers.
248.9 Exception to opt out requirements for service providers and joint marketing.
248.10 Exceptions to notice and opt out requirements for processing and servicing transactions.
248.11 Other exceptions to notice and opt out requirements.
248.12 Limits on redisclosure and reuse of information.

or dealer that had total capital of less than $500,000 on the date of its prior fiscal year and is not affiliated with any person that is not a small entity. 17 CFR 240.0–10. Under the Investment Company Act a ''small entity'' is an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10. Under the Investment Advisers Act, a small entity is an investment adviser that ''(i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person that had total assets of $5 million or more on the last day of the most recent fiscal year. 17 CFR 275.0–7.

[70] 15 U.S.C. 78w(a)(2).

[71] *See, e.g.,* Banking Agencies' Proposal, *supra* note 2.

[72] G–L–B Act § 501(b).

[73] 15 U.S.C. 78c(f).

[74] 15 U.S.C. 80a–2(c).

248.13 Limits on sharing of account number information for marketing purposes.
248.14 Protection of Fair Credit Reporting Act.
248.15 Relation to State laws.
248.16 Effective date; transition rule.
248.17–248.29 [Reserved]
248.30 Procedures to safeguard customer records and information.

Authority: 15 U.S.C. 6801–6809; 15 U.S.C. 78q, 78w, 80a–30(a), 80a–37, 80b–4, 80b–11.

§ 248.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to consumers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by ''opting out'' of that disclosure, subject to the exceptions in §§ 248.9, 248.10, and 248.11.

(b) *Scope.* The rules established by this part apply only to nonpublic personal information about individuals who obtain financial products or services for personal, family or household purposes from the institutions listed in section 248.3(x). This part does not apply to information about companies or about individuals who obtain financial products or services for business purposes. This part applies to brokers, dealers, and investment companies and to investment advisers that are registered with the Commission. These entities are referred to in this part as ''you.''

§ 248.2 Rule of construction.

The examples in this part provide guidance concerning the rule's application in ordinary circumstances. The facts and circumstances of each individual situation, however, will determine whether compliance with an example constitutes compliance with the applicable rule.

§ 248.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Affiliate* of a broker, dealer, or investment company, or an investment adviser registered with the Commission means any company that controls, is controlled by, or is under common control with the broker, dealer, or investment company, or investment adviser registered with the Commission. In addition, a broker, dealer, or investment company, or an investment adviser registered with the Commission will be deemed an affiliate of a company for purposes of this part if:

(1) That company is regulated under Title V of the G–L–B Act by a government regulator other than the Commission; and

(2) Rules adopted by the other government regulator under Title V of the G–L–B Act treat the broker, dealer, or investment company, or investment adviser registered with the Commission as an affiliate of that company.

(b) *Broker* has the same meaning as in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)).

(c)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.

(2) *Examples.* (i) You make your notice reasonably understandable if you:

(A) Present the information contained in the notice in clear, concise sentences, paragraphs and sections;

(B) Use short explanatory sentences and bullet lists, whenever possible;

(C) Use definite, concrete, everyday words and active voice, whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology; and

(F) Avoid boilerplate explanations that are imprecise and readily subject to different interpretations.

(ii) You design your notice to call attention to the nature and significance of the information contained in it if, whenever possible, you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read; and

(C) Provide wide margins and ample line spacing.

(iii) If you provide a notice on the same form as another notice or other document, you design your notice to call attention to the nature and significance of the information contained in the notice if you use:

(A) Larger type size(s);

(B) Boldface or italics for key words in the text;

(C) Wider margins and line spacing in the notice; or

(D) Shading or sidebars to highlight the notice.

(d) *Collect* means to obtain information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information.

(e) *Commission* means the Securities and Exchange Commission.

(f) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(g)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, and that individual's legal representative.

(2) *Examples.* (i) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain brokerage services or investment advisory services is a consumer whether or not you provide brokerage services to the individual or establish an ongoing advisory relationship with the individual.

(ii) An individual who provides you with name, address, and areas of investment interest in connection with a request for a prospectus or an investment adviser brochure or other information about financial products is not a consumer.

(iii) An individual is not a consumer for your purposes when the individual has an account with another broker or dealer that carries securities for the individual in a special omnibus account with you in the name of the broker or dealer, and when you do not routinely receive any information about the consumer.

(iv) If you are an investment company, an individual is not a consumer for your purposes when the individual purchases an interest in shares you have issued only through a broker or investment adviser who is the record owner of those shares.

(h) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(i) *Control* means the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own 25 percent of the voting securities of any company will be presumed not to control the company. Any presumption regarding control may be rebutted by evidence, but, in the case of an investment company, will continue until the Commission makes a decision to the contrary according to the procedures described in section 2(a)(9)

of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(9)).

(j) *Customer* means a consumer who has a customer relationship with you.

(k)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) *Examples.* (i) A consumer has a continuing relationship with you if the consumer:

(A) Has a brokerage account with you;

(B) Has an investment advisory contract with you (whether written or oral); or

(C) Is the record owner of securities you have issued if you are an investment company.

(ii) You have a customer relationship with a consumer if the consumer has an account with an introducing broker-dealer that clears transactions with and for its customers through you on a fully disclosed basis.

(iii) You have a customer relationship with a consumer if you hold securities or other assets as collateral for a loan made to the consumer, even if you did not make the loan or do not effect any transactions on behalf of the consumer.

(iv) You have a customer relationship with a consumer if you regularly effect or engage in securities transactions with or for a consumer even if you do not hold any assets of the consumer.

(v) A consumer who does not establish an account with you does not have a continuing relationship with you if you provide brokerage services to the consumer on a one-time basis as an accommodation or to liquidate securities without the expectation of engaging in other transactions.

(l) *Dealer* has the same meaning as in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)).

(m)(1) *Financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(n)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation, brokerage or distribution of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(3) *Financial product,* for purposes of this part, includes an equity interest in an investment company.

(o) *G–L–B Act* means the Gramm-Leach-Bliley Act (Pub. L. No. 106–102, 113 Stat. 1338 (1999)).

(p) *Government regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Director of the Office of Thrift Supervision;

(5) The National Credit Union Administration Board;

(6) The Securities and Exchange Commission;

(7) The Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping);

(8) A State insurance authority, with respect to any person domiciled in that insurance authority's State that is engaged in providing insurance; and

(9) The Federal Trade Commission.

(q) *Investment adviser* has the same meaning as in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

(r) *Investment company* has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), and includes a separate series of the investment company.

(s)(1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

(2) *Nonaffiliated third party* includes any company that is an affiliate by virtue of the direct or indirect ownership or control of the company by the financial institution or any affiliate of the financial institution in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(I)).

(t)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers (and publicly available information about them) that is derived using any personally identifiable financial information.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as provided in paragraph (t)(1)(ii) of this section or when the publicly available information is disclosed in a manner that indicates the individual is or has been your customer; or

(ii) Any list, description, or other grouping of consumers (and publicly available information about them) that is derived without using any personally identifiable financial information.

(3) *Example.* Nonpublic personal information includes any list of individuals' street addresses and telephone numbers that is derived using personally identifiable financial information, such as account numbers.

(u) *Person* has the same meaning as in section 3(a)(9) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(9)).

(v)(1) *Personally identifiable financial information* means any information:

(i) Provided by a consumer to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples.* (i) Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to establish a brokerage account, enter into an investment advisory contract, or to purchase securities or other financial products or services, including, among other things, medical information;

(B) Information about account balance, payment history, overdraft history, credit or debit card purchases,

securities positions, or investment products purchased or sold;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you, unless that fact is derived using only publicly available information, such as bankruptcy records;

(D) Other information about your consumer if it is disclosed in a manner that indicates the individual is or has been your consumer;

(E) Any information provided by a consumer or otherwise obtained by you or your agent in connection with collecting on a loan or servicing a loan; and

(F) Information from a consumer report.

(ii) Personally identifiable financial information does not include a list of names and addresses of customers of an entity that is not a financial institution.

(w)(1) *Publicly available information* means any information that you reasonably believe is lawfully made available to the general public from:

(i) Federal, State or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, State or local law.

(2) *Examples.* (i) *Government records.* Publicly available information contained in government records includes information contained in government real estate records, security interest filings, and bankruptcy filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or an Internet site that is available to the general public without requiring a password or similar restriction.

(x) *You* means:

(1) Any broker or dealer,

(2) Any investment company; and

(3) Any investment adviser registered with the Commission under the Investment Advisers Act of 1940.

§ 248.4 Initial notice to consumers of privacy policies and practices required.

(a) *When initial notice is required.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) An individual who becomes your customer, prior to the time that you establish a customer relationship, except as provided in paragraph (d)(1) of this section; and

(2) A consumer (who has not become your customer), prior to the time that you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 248.10 and 248.11.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a)(1) of this section if:

(1) You do not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by §§ 248.9, 248.10, or 248.11; and

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship.* (1) *General rule.* You establish a customer relationship at the time you and the consumer enter into a continuing relationship.

(2) *Examples.* You establish a customer relationship with a consumer when the consumer:

(i) Effects a securities transaction with you or opens a brokerage account with you under your procedures;

(ii) Opens a brokerage account with an introducing broker or dealer that clears transactions with and for its customers through you on a fully disclosed basis;

(iii) Enters into an advisory contract with you (whether in writing or orally); or

(iv) Purchases shares you have issued (and the consumer is the record owner of the shares), if you are an investment company.

(d) *How to provide notice.* (1) *General rule.* You must provide the privacy notice required by paragraph (a) of this section so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form.

(2) *Exceptions to allow subsequent delivery of notice.* You may provide the initial notice required by paragraph (a) of this section within a reasonable time after you establish a customer relationship if you and the consumer orally agree to enter into a customer relationship and the consumer agrees to receive the notice thereafter.

(3) *Oral description of notice insufficient.* You may not provide the initial notice required by paragraph (a) of this section solely by orally explaining, either in person or over the telephone, your privacy policies and practices.

(4) *Retention or accessibility of initial notice for customers.* For customers only, you must provide the initial notice required by paragraph (a)(1) of this section so that it can be retained or obtained at a later time by the customer, in a written form or, if the customer agrees, in electronic form.

(5) *Examples.* (i) You may reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(A) Hand-deliver a printed copy of the notice to the consumer;

(B) Mail a printed copy of the notice to the last known address of the consumer;

(C) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(D) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(ii) You may *not,* however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(A) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices;

(B) Send the notice by electronic mail to a consumer who obtains a financial product or service with you in person or through the mail and who does not agree to receive the notice electronically.

(iii) You provide the initial privacy notice to the customer so that it can be retained or obtained at a later time if you:

(A) Hand-deliver a printed copy of the notice to the customer;

(B) Mail a printed copy of the notice to the last known address of the customer upon request of the customer;

(C) Maintain the notice on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and who agrees to receive the notice electronically.

§ 248.5 Annual notice to customers required.

(a) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of twelve consecutive months during which that relationship exists.

(b) *How to provide notice.* You must provide the annual notice required by paragraph (a) of this section to a

customer using a means permitted for providing the initial notice to that customer under § 248.4(d).

(c)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a customer with whom you no longer have a continuing relationship.

(2) *Examples.* You no longer have a continuing relationship with an individual if:

(i) The individual's brokerage account is closed;

(ii) The individual's investment advisory contract is terminated;

(iii) You are an investment company and the individual no longer holds shares in the company; or

(iv) You are an investment company and your customer has been determined to be a lost securityholder as defined in 17 CFR 240.17a–24(b).

§ 248.6 Information to be included in initial and annual notices of privacy policies and practices.

(a) *General rule.* The initial and annual notices that you provide about your privacy policies and practices under §§ 248.4 and 248.5 must include each of the following items of information:

(1) The categories of nonpublic personal information about your consumers that you collect;

(2) The categories of nonpublic personal information about your consumers that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your consumers, other than those parties to whom you disclose information under §§ 248.10 (exceptions for processing and servicing accounts or transactions) and 248.11 (exceptions for consumer consent and to comply with various legal requirements);

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 248.10 and 248.11;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 248.9 (and no other exception applies to that disclosure), a separate description of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the right under § 248.8(a) of the consumer to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise that right;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates); and

(8) Your policies and practices with respect to protecting the confidentiality, security and integrity of nonpublic personal information.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information about a consumer to third parties as authorized under §§ 248.10 and 248.11, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 248.4 and 248.5. When describing the categories with respect to those parties, you are only required to state that you make disclosures to other nonaffiliated third parties as permitted by law.

(c) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(d) *Examples.* (1) *Categories of nonpublic personal information that you collect.* You adequately categorize the nonpublic personal information you collect if you categorize it according to the source of the information, such as application information, information about transactions (such as information regarding your brokerage or investment advisory account), and consumer reports.

(2) *Categories of nonpublic personal information you disclose.* You adequately categorize nonpublic personal information you disclose if you categorize it according to source, and provide a few illustrative examples of the content of the information. These might include application information, such as assets and income, investment goals, or investment risk tolerance; identifying information, such as name, address, and social security number; and transaction information, such as information about account balance, payment history, parties to the transaction, credit card usage, securities positions, or securities purchases and sales; and information from consumer reports, such as a consumer's creditworthiness and credit history. You do not adequately categorize the information that you disclose if you use only general terms, such as transaction information about the consumer.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You adequately categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about consumers if you identify the types of businesses that they engage in. Types of businesses may be described by general terms only if you use a few illustrative examples of significant lines of business. For example, you may use the term financial products or services if you include appropriate examples of significant lines of businesses, such as consumer banking, mortgage lending, life insurance, securities brokerage, or financial planning. You also may categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about consumers using more detailed categories.

(4) *Simplified notices.* If you do not disclose, and do not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1) and (a)(8), and (b) of this section.

(5) *Confidentiality, security, and integrity.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you explain who has access to the information and the circumstances under which the information may be accessed. You describe your policies and practices with respect to protecting the integrity of nonpublic personal information if you explain measures you take to protect against reasonably anticipated threats or hazards. You are not required to describe technical information about the safeguards you use.

§ 248.7 Limitation on disclosure of nonpublic personal information about consumers to nonaffiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 248.4;

(ii) You have provided to the consumer an opt out notice as required in § 248.8;

(iii) You have given the consumer a reasonable opportunity, before the time

that you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 248.9, 248.10 and 248.11.

(3) *Examples of reasonable opportunity to opt out.* (i) *By mail.* You provide a consumer with whom you have a customer relationship with a reasonable opportunity to opt out if you mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer a reasonable period of time, such as 30 days, to opt out.

(ii) *Isolated transaction with consumer.* For an isolated transaction, such as the provision of brokerage services as an accommodation to a consumer who does not establish an account with you, you provide a reasonable opportunity to opt out if you provide the consumer with the required notices at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.*

(1) You must comply with this section regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 248.8 Form and method of providing opt out notice to consumers.

(a)(1) *Form of opt out notice.* You must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under § 248.7(a)(1). The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.* (i) You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose to nonaffiliated third parties as described in § 248.6 and state that the consumer can opt out of the disclosure of that information.

(ii) You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice; or

(C) Provide an electronic means to opt out, such as a form that can be sent by electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information.

(iii) You do not provide a reasonable means of opting out if the only means of opting out is for the consumer to write his or her own letter to exercise that opt out right.

(b) *How to provide opt out notice.* (1) *Delivery of notice.* You must provide the opt out notice required by paragraph (a) of this section in a manner so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form. If you and the consumer orally agree to enter into a customer relationship, you may provide the opt out notice required by paragraph (a) of this section within a reasonable time thereafter if the consumer agrees.

(2) *Oral description of opt out right insufficient.* You may not provide the opt out notice solely by orally explaining, either in person or over the telephone, the right of the consumer to opt out.

(3) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 248.4.

(4) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice at a later time than required for the initial notice in accordance with § 248.4, you must also include a copy of the initial notice in writing or, if the consumer agrees, in an electronic form with the opt out notice.

(c) *Notice of change in terms.* (1) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to the consumer under § 248.4, unless:

(i) You have provided to the consumer a revised notice that accurately describes your policies and practices;

(ii) You have provided to the consumer a new opt out notice;

(iii) You have given the consumer a reasonable opportunity, before the time that you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *How to provide notice of change in terms.* You must provide the revised notice of your policies and practices and opt out notice to a consumer using the means permitted for providing the initial notice and opt out notice to that consumer under § 248.4(d) or § 248.8(b).

(3) *Examples.* (i) Except as otherwise permitted by §§ 248.9, 248.10 and 248.11, a change-in-terms notice is required if you:

(A) Disclose a new category of nonpublic personal information to any nonaffiliated third party; or

(B) Disclose nonpublic personal information to a new category of nonaffiliated third party.

(ii) A change-in-terms notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that is adequately described by your prior notice.

(d) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time, and you must comply with the consumer's direction as soon as reasonably practicable.

(e) *Duration of consumer's opt out direction.* A consumer's direction to opt out under this section is effective until revoked by the consumer in writing, or if the consumer agrees, in electronic form.

§ 248.9 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* The opt out requirements in §§ 248.7 and 248.8 do not apply when you provide nonpublic personal information about a consumer to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(1) Provide the initial notice in accordance with § 248.4; and

(2) Enter into a contractual agreement with the third party that:

(i) Requires the third party to maintain the confidentiality of the information to at least the same extent that you must maintain that confidentiality under this part; and

(ii) Limits the third party's use of information you disclose solely to the purposes for which the information is disclosed or as otherwise permitted by §§ 248.10 and 248.11.

(b) *Service may include joint marketing.* The services performed for you by a nonaffiliated third party under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, *joint agreement* means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 248.10 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 248.4(a)(2), the opt out in §§ 248.7 and 248.8, and service providers and joint marketing in § 248.9, do not apply if you disclose nonpublic personal information:

(1) As necessary to effect, administer, or enforce a transaction requested or authorized by the consumer;

(2) To service or process a financial product or service requested or authorized by the consumer;

(3) To maintain or service the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(4) In connection with a proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate, or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by federal or State law; or

(vi) In connection with settling a transaction, including:

(A) The authorization, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit or other payment information.

§ 248.11 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice to consumers in § 248.4(a)(2), the opt out in §§ 248.7 and 248.8, and initial notice to consumers under the exception for service providers and joint marketing in § 248.9, do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including government regulators), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with federal, State, or local laws, rules and other applicable legal requirements, including rules or other applicable legal requirements of self-regulatory organizations;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, State, or local authorities or self-regulatory organizations; or

(iii) To respond to judicial process, government regulatory authorities, or self-regulatory organizations having jurisdiction over you for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated mortgage lender of the value of the assets in the consumer's brokerage or investment advisory account so that the lender can evaluate the consumer's application for a mortgage loan.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 248.8(d).

§ 248.12 Limits on redisclosure and reuse of information.

(a) *Limits on your redisclosure and reuse.* (1) Except as otherwise provided in this part, if you receive nonpublic personal information about a consumer from a nonaffiliated financial institution, you must not, directly or through an affiliate, disclose the

information to any other person that is not affiliated with either the financial institution or you, unless the disclosure would be lawful if the financial institution made it directly to that other person.

(2) You may use nonpublic personal information about a consumer that you receive from a nonaffiliated financial institution in accordance with an exception under §§ 248.9, 248.10, or 248.11 only for the purpose of that exception.

(b) *Limits on redisclosure and the reuse by other persons.* (1) Except as otherwise provided in this part, if you disclose nonpublic personal information about a consumer to a nonaffiliated third party, that party must not, directly or through an affiliate, disclose the information to any other person that is a nonaffiliated third party of both you and that party, unless the disclosure would be lawful if you made it directly to such other person.

(2) A nonaffiliated third party may use nonpublic personal information about a consumer that it receives from you in accordance with an exception under §§ 248.9, 248.10, or 248.11 only for the purpose of that exception.

(3) *Example.* If you provide nonpublic personal information to a nonaffiliated transfer agent that services your customer accounts, the transfer agent may not, directly or through an affiliate, disclose the nonpublic personal information to any other person that is a nonaffiliated third party of you and the transfer agent unless you could lawfully make the disclosure to that party.

§ 248.13 Limits on sharing of account number information for marketing purposes.

You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

§ 248.14 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 248.15 Relation to State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that the State statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection that statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the Commission, on the Federal Trade Commission's own motion or upon the petition of any interested party.

§ 248.16 Effective date; transition rule.

(a) *Effective date.* This part is effective November 13, 2000.

(b) *Notice requirement for consumers who were your customers on the effective date.* No later than thirty days after the effective date of this part, you must provide an initial notice, as required by § 248.4, to consumers who were your customers on the effective date of this part.

§§ 248.17–248.29 [Reserved]

§ 248.30 Procedures to safeguard customer records and information.

Every broker, dealer, and investment company, and every investment adviser registered with the Commission must adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. These policies and procedures must be reasonably designed to:

(a) Insure the security and confidentiality of customer records and information;

(b) Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and

(c) Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

By the Commission.

Dated: March 2, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5526 Filed 3–3–00; 10:05 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
March 8, 2000

Part IV

Environmental Protection Agency

40 CFR Part 262

180-Day Accumulation Time Under RCRA for Waste Water Treatment Sludges From the Metal Finishing Industry; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[FRL–6547–6]

RIN 2050–AE60

180-Day Accumulation Time Under RCRA for Waste Water Treatment Sludges From the Metal Finishing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As part of the Common Sense Initiative, the Environmental Protection Agency (EPA) is today finalizing a cleaner, cheaper, and smarter opportunity for environmental protection for the Metal Finishing industry. EPA is promulgating regulations that allow large quantity generators of F006 sludges (certain sludges from the treatment of electroplating wastewaters) up to 180 days (or up to 270 days, as applicable) to accumulate F006 waste without a hazardous waste storage permit or interim status, provided that these generators recycle the F006 through metals recovery and meet certain conditions. On February 1, 1999, EPA proposed the 180-day (or 270-day, as applicable) accumulation time to address existing economic barriers to the recycling of F006 waste through metals recovery and to provide large quantity generators of F006 waste with an incentive to choose metals recovery instead of treatment and land disposal as their final waste management option. Today's final rule adopts that proposal, with some modifications made in response to public comments.

EFFECTIVE DATE: This final rule is effective on March 8, 2000.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket identification number is F–2000–F06F–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that members of the public make appointments by calling (703) 603–9230. Members of the public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the ''Supplementary Information'' section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Kathy Blanton, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW, Washington, DC 20460–0002, (703) 605–0761, blanton.katherine@epa.gov

SUPPLEMENTARY INFORMATION:

Internet Availability

This rule is available on the Internet. You can find it at: *http://www.epa.gov/epaoswer/hazwaste/gener/f006acum.htm*

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I. Authority

These regulations are promulgated under the authority of sections 2002 and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912 and 6922.

II. Background

A. Purpose and Context of Final Rule

The Resource Conservation and Recovery Act (RCRA) directs EPA to promulgate standards for generators of hazardous waste as necessary to protect human health and the environment (RCRA Section 3002). Section 1003 of RCRA establishes a national objective of ''minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitutions, materials recovery, properly conducted recycling and reuse, and treatment.'' In response to these provisions, EPA has endeavored to develop regulations that promote legitimate recycling of solid and hazardous waste while protecting human health and the environment against the development and use of unsafe or sham recycling practices. On February 1, 1999, in an effort to promote the legitimate materials recovery of F006 hazardous wastes (sludges from the treatment of electroplating wastewaters) and to reduce the volume of F006 that is land disposed, EPA proposed to allow large quantity generators of F006 up to 180 days (or

270 days in certain circumstances) to accumulate F006 on-site without a RCRA permit or interim status, if the F006 waste would be recycled through metals recovery and if the generators complied with certain conditions while the F006 was being accumulated on-site (64 FR 4818). Today's final rule adopts that proposal, with some modifications made in response to public comments.

Today's final rule allows large quantity generators of F006 waste up to 180 days (or 270 days in certain circumstances) to accumulate F006 waste on-site, without a RCRA permit or interim status, as an incentive to encourage metals recovery and pollution prevention practices for this waste. Under this final rule, F006 wastes that are not destined for metals recovery would not be eligible for the 180-day (or 270-day, as applicable) accumulation time. In order to ensure that on-site accumulation of F006 waste is protective of human health and the environment, the management standards for 180-day (or 270-day, as applicable) on-site accumulation of F006 are the same as those that currently apply to 90-day on-site accumulation.

Currently, generators who generate greater than 1,000 kilograms of hazardous waste in a calendar month (i.e., large quantity generators (LQGs)) may accumulate hazardous waste on-site, without having to obtain a RCRA permit for the on-site accumulation activities, for a period of up to 90 days. Many generators of F006 wastewater treatment sludges have indicated that this 90-day accumulation limit restricts their ability to generate a large enough volume of F006 sludge to make recycling economically feasible when compared to treatment and land disposal. This is principally due to: (1) The relatively high cost of transportation of the hazardous sludge from a generator's establishment to a recycling or smelting facility (due, in part, to longer distances to metals recovery facilities and shipment of partial truckloads) and (2) the surcharge that metals recovery facilities generally charge generators and waste brokers managing small quantities of F006 waste.

In this final rule, EPA is allowing large quantity generators of F006 electroplating sludge to accumulate F006 waste on-site for up to 180 days (or 270 days under certain circumstances) in tanks, containers, or containment buildings without a RCRA permit or interim status, if the generator: (1) implements pollution prevention practices that reduce the amount of any hazardous substance, pollutant or contaminant entering F006 or otherwise released into the environment prior to its recycling, (2) recycles the F006 waste through metals recovery, (3) accumulates no more than 20,000 kilograms of F006 waste on-site at any one time, and (4) complies with the applicable management standards in the rule. This proposal does not change any other requirements applicable to generators of hazardous waste. Large quantity generators of F006 are only required to meet the conditions of today's rule if they accumulate F006 on-site, without a RCRA permit or interim status, for more than 90 days. However, the conditions of today's rule must be met for the entire accumulation period. Large quantity generators of F006 who accumulate waste for 90 days or less without a RCRA permit or interim status may continue to comply with the conditions of 40 CFR 262.34(a).

EPA is basing this final rule in part on discussions and information gathered as part of the Agency's Common Sense Initiative for the Metal Finishing Industry. The Common Sense Initiative, as well as broader changes in the regulation of F006 waste being considered as part of the Common Sense Initiative, are discussed in more detail below. The Agency notes that this final rule only affects the amount of time large quantity generators of F006 waste may accumulate that waste on-site, without a RCRA permit or interim status, prior to having it processed for metals recovery. At this time, EPA is making no other changes to the hazardous waste management standards governing generator activities. All other provisions governing large quantity generators under 40 CFR part 262 (e.g. unit specific standards, recordkeeping and reporting, and manifesting requirements) remain unchanged and in effect for large quantity generators of F006 waste.

B. Common Sense Initiative (CSI) for the Metal Finishing Industry and the National Advisory Council for Environmental Policy and Technology (NACEPT) Committee on Sectors

This final rule is an outgrowth of activities conducted under the EPA's Common Sense Initiative (CSI) for the metal finishing industry sector. These activities, including further work on F006 issues, are continuing as part of the Agency's Standing Committee on Sectors of the National Advisory Council for Environmental Policy and Technology (NACEPT).

The CSI, an innovative approach to environmental protection and pollution prevention, was established on October 17, 1994, through a charter pursuant to the Federal Advisory Committee Act (FACA). The goal of the CSI was to use multi-stakeholder consensus decision-making to recommend policy and program changes to the CSI Council and the EPA Administrator. EPA selected six industries to serve as CSI pilot industries: automobile manufacturing, computer and electronics, iron and steel, metal finishing, petroleum refining, and printing. These six industries comprise over 11 percent of the U.S. gross domestic product, employ over 4 million people, and account for over 12 percent of the toxic releases reported by United States industry. As such, they offered excellent opportunities to test and refine CSI concepts, to create environmental solutions that could operate across industries, and to identify opportunities to expand CSI concepts to other relevant industries.

CSI was organized through an advisory committee referred to as the ''CSI Council'' that was comprised of high-level representatives from various stakeholder groups, including all involved industries. For each industry, known as a ''sector'' in CSI, the CSI Council established a subcommittee of stakeholders to look for cleaner, cheaper, and smarter opportunities for environmental protection in that sector. Sector subcommittees and work groups met frequently to develop and discuss various projects, policy recommendations, and other issues. Sector options, proposals, issues, and data were forwarded to the CSI Council for further action. The CSI Council considered matters from the sector subcommittees and made recommendations to the Administrator. The CSI process produced better, tailored environmental protection strategies that were developed, in part, by the regulated community, in concert with regulatory agencies and public interest groups.

Since beginning their work in January 1995 the sector subcommittees developed nearly 40 projects involving more than 150 stakeholders who actively participated in sector subcommittees and subcommittee workgroups. Some of the projects were specific to individual sectors. Other projects explored solutions to common issues such as alternative flexible regulatory systems, pollution prevention, reporting, compliance, permitting, and environmental technology.

This final rule stems primarily from CSI efforts in the metal finishing industry sector. The metal finishing industry consists of more than eight thousand ''captive'' metal finishers that

operate within larger manufacturing facilities and operate within the financial structure of a larger company, as well as more than three thousand ''job shops'' (i.e. independent metal plating firms that complete jobs on contract). Seventy-one percent of job shops employ fewer than 20 employees and operate with limited capital and personnel. The industry is geographically diverse and is most concentrated in heavily industrialized states. Because of the cross-media impacts of their operations, metal finishers face a broad range of federal, state, and local environmental requirements (especially with regard to water use and waste disposal).

The CSI metal finishing subcommittee had 24 members representing metal finishing companies, trade associations, suppliers, environmental and community groups, organized labor, and state and local governments. Some of the representative organizations included the American Electroplaters and Surface Finishers Society, the National Association of Metal Finishers, the Natural Resources Defense Council, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), the Barrio Planners of Los Angeles, the Water Environment Federation, and the Association of Metropolitan Sewerage Agencies. As part of its work under CSI, the metal finishing subcommittee developed a set of ambitious voluntary performance goals to promote pollution prevention and environmental management beyond what is currently required for the industry under federal regulations (known as the Strategic Goals Program). The goals address resource utilization, hazardous emissions, economic paybacks, and compliance costs.

As a means towards meeting these goals, the metal finishing subcommittee endorsed 14 projects and supported an additional CSI small business sector project. In addition to these 14 projects, the action plan also contains ''enabling actions'' that all stakeholders have committed to undertake to help the industry meet the Strategic Goals. The focus of today's rule, allowing large quantity generators of F006 waste to accumulate the sludge for up to 180 days (or 270 days, as applicable), is an enabling action identified that would remove some unnecessary barriers to recycling and would promote the goals of the CSI effort. Specifically, the final rule is an outgrowth of the CSI stakeholders' efforts and is designed to encourage more recycling of F006 waste through metals recovery.

Another of the enabling actions is a project to examine whether the physical nature of F006 waste has changed as a result of process improvements in the last twenty years, and if so, whether some type of regulatory, administrative, or other relief for the management of F006 waste is warranted. Phase I of this study was a *Metal Finishing F006 Benchmark Study* issued by EPA in September 1998. This study is included in the docket for this rulemaking. Phase II of the study is now in process. This phase involves identifying additional data needs, if any, and examining potential regulatory and administrative strategies that may promote metals recovery of F006 waste, encourage pollution prevention practices related to the generation of F006 waste, and reduce or remove possible RCRA barriers to metals recovery of F006 waste.

The CSI charter expired on February 17, 1999. However, EPA and the CSI Council felt it was important for EPA to continue to receive stakeholder input on its progress toward a sector-based approach for environmental protection. The Agency found that the National Advisory Council for Environmental Policy and Technology (NACEPT) was the appropriate vehicle to help the Agency incorporate the sector-based approach to environmental protection into EPA's core functions. The NACEPT Standing Committee on Sectors' first meeting was April 15–16, 1999, in Washington, DC. The Committee on Sectors' role is to provide advice and recommendations to the Administrator through the NACEPT Council. Three of the six CSI Subcommittees (Printing, Petroleum Refining, and Metal Finishing) have been set up as work groups under the new NACEPT Standing Committee on Sectors. The Committee on Sectors will provide the workgroups with a forum to continue their work. Thus, the metal finishing sector's further work on F006 issues is continuing under the NACEPT structure. The workgroups are not authorized to advise EPA directly; they will provide advice to the Standing Committee on Sectors which, in turn, provides advice and recommendations to the Administrator through the NACEPT Council.

C. Current Accumulation Time for Large Quantity Generators

The current standards under 40 CFR part 262 for generators of hazardous waste who generate greater than 1,000 kilograms of hazardous waste per calendar month (large quantity generators (LQGs)) limit the amount of time hazardous waste can be accumulated on-site without a RCRA permit. Under the existing 40 CFR 262.34, LQGs may accumulate any quantity of hazardous waste on-site for up to 90 days without having to obtain a RCRA permit. This provision was established to provide generators sufficient time in all reasonable situations for waste accumulation to occur prior to waste management without interfering with generator manufacturing processes. 51 FR 25487 (July 14, 1986).

Under the existing 90-day accumulation rule, LQGs must comply with certain unit-specific standards for accumulation units (e.g. standards for tanks, containers, containment buildings, and drip pads), and standards for marking and labeling, preparedness and prevention, contingency plan and emergency procedures, personnel training, and land disposal restrictions (40 CFR 262.34(a)). Large quantity generators may also petition the EPA Regional Administrator for an extension of up to 30 days to the 90-day accumulation time limit due to unforeseen, temporary, and uncontrollable circumstances, on a case-by-case basis under 40 CFR 262.34(b).

As outlined above, and explained below in Section III, the Agency is promulgating regulations to allow large quantity generators of F006 wastewater treatment sludges to accumulate the waste prior to metals recovery for up to 180 days (or 270 days in certain circumstances) without a RCRA permit, provided the generators comply with certain conditions. Today's final rule makes no changes to the existing conditions for 90-day accumulation under the current regulations, and does not in any way re-open those regulations for review.

III. Rationale for Allowing 180 (or 270) Days to Accumulate F006 Wastes Recycled by Metals Recovery

A. Increased Recycling of F006

Today's rule is designed to provide incentives to large quantity generators of F006 waste to recycle their F006 waste through metals recovery.

EPA data indicates that about 40 percent of large quantity generators of F006 waste potentially affected by this final rule recycle their waste; the remainder use land disposal. EPA believes that some large quantity generators of F006 may be choosing land disposal over recycling for economic reasons, since transportation and costs for recycling by metals recovery can be more expensive for many large quantity generators of F006 than the costs for land disposal.

Of the estimated 1,934 large quantity generators of F006, an estimated 1,483

generally do not generate enough F006 to fill a hazardous waste transporter truck within 90 days. Because under the current regulations large quantity generators may only accumulate hazardous waste on-site without a RCRA permit for 90 days, these 1,483 large quantity generators must ship partial truck loads. The transportation costs for these partial truck loads are disproportionately higher than they would be for full truck loads because there is generally some fixed cost associated with having a truck pick up a load of F006 waste, regardless of whether the truck is picking up a partial or full load. For the fixed cost portion of the load, the cost per unit of F006 waste for shipping the waste is more for partial loads than full loads (i.e., the cost per unit of F006 waste for the fixed cost portion of the truck is twice as much for a half-filled truck compared to a full truck). Allowing large quantity generators of F006 waste to accumulate a full truck load of such waste will therefore decrease the cost per unit of F006 waste associated with shipping the waste off-site for metals recovery.

In the United States, there are significantly more landfills than metals recovery facilities that handle F006 wastes. Because there are fewer recycling facilities in the U.S. that can recover metals from F006 waste than landfills that accept F006 waste for disposal, the distances from generators' sites to metals recovery facilities are generally greater than to landfills. Accordingly, many generators seek to minimize shipping costs (which are usually based on a per-mile unit cost) by finding the nearest RCRA permitted treatment, storage or disposal facility, which is most often a landfill. Thus, many large quantity generators may not choose metals recovery for their F006 waste due to the higher costs associated with longer transport distances to recycling facilities as compared to landfills.

In order to facilitate more F006 waste metals recovery and less F006 land disposal, EPA has, in this final rule, provided an accumulation period of up to 180 days (or 270 days, as applicable) only if a large quantity generator chooses to recycle F006 for metals recovery. EPA estimates, based on its analysis of waste generation and management patterns in the industry, that 1,483 more large quantity generators of F006 waste will be able to accumulate larger amounts (some of which will be full truck loads) and ship less frequently during the 180-day (or 270-day, as applicable) period. Shipping a fuller truck load of F006 waste will make F006 waste metals recovery more cost effective for a significant percentage of large quantity generators who currently land dispose F006, thereby encouraging more F006 waste metals recovery. Shipping a fuller truck load of F006 waste will also make F006 waste metals recovery even more cost effective for large quantity generators who are already recycling F006 waste. In the Regulatory Impact Analysis for this rulemaking (available in the docket for this rulemaking), the Agency estimated that 72% to 89% of the 1,483 generators affected by this rule will take advantage of the flexibility provided in today's final rule. F006 waste metals recovery also promotes resource conservation because metals recovered from the sludges may serve as alternative feedstocks for primary metals in production and manufacturing processes.

In addition, EPA believes that the rationale supporting the 180-day (or 270-day, as applicable) accumulation time in today's rule is consistent with the rationale for the 90-day accumulation rule. In promulgating the 90-day accumulation rule, EPA allowed large quantity generators to accumulate waste on-site without a RCRA permit or interim status, partly because such activity was consistent with typical generator activities. The 180-day (or 270-day, as applicable) accumulation time in today's rule will facilitate the appropriate handling of F006 waste by a large quantity generator prior to its being recycled for metals recovery. EPA believes that accumulating F006 waste on-site for up to 180 days, or up to 270 days, as applicable (to facilitate more recycling through metals recovery), is more consistent with generator activities than with typical treatment, storage, or disposal facility activities, because the 180-day (or 270-day, as applicable) accumulation is part of the initial handling and consolidation of hazardous waste that a generator undertakes prior to moving that waste on for recovery or for final treatment, storage, or disposal. Today's proposed rule maintains the rationale of the 90-day accumulation rule.

B. Protective of Human Health and the Environment

The provisions of today's rule also ensure that on-site accumulation of F006 for 180 days (or 270 days under certain circumstances) is protective of human health and the environment. The same conditions that apply to 90-day accumulation of any hazardous waste apply to the 180-day (or 270-day, as applicable) accumulation of F006. The F006 waste must be accumulated in tanks, containers, or containment buildings that meet applicable management standards.[1] These units and relevant standards are designed to minimize releases of hazardous waste to the environment. F006 waste generators commonly accumulate F006 waste in super sacks (sacks that are reinforced woven resin and designed to accommodate bulk shipments) or bulk accumulation containers. These super sack containers are designed to prevent releases of F006 (see 62 FR 25998, 26013 (1997)). The regulations governing accumulation of hazardous waste in containers require such measures as ensuring that the container is closed except when adding or removing waste, and that the container is never handled in a manner which may cause it to rupture or leak.[2] In addition, as with 90-day accumulation, in order to accumulate F006 on-site for 180 days (or 270 days, as applicable), large quantity generators of F006 are required to follow personnel training, preparedness and prevention, and contingency plan and emergency procedure requirements. With these conditions in place, EPA believes that allowing large quantity generators of F006 waste to accumulate F006 for 180 days (or 270 days as applicable) does not pose any significantly increased potential harm to human health or the environment.

EPA received a number of comments relating to the Agency's rationale for taking this action. Some of the key comments and EPA's responses to these comments are summarized below and in subsequent sections. The docket for today's rule contains responses to all comments. EPA received some comments arguing that accumulating F006 on-site for 180 days (or 270, as applicable) could result in increased risks to human health and the environment. One commenter suggested that the longer accumulation time will create more potential for a release through deterioration, damage, or mismanagement, and that F006 wastes pose particular risks of harm when accumulated for longer periods because many of these wastes are corrosive and highly alkaline, resulting in a higher risk of drum deterioration and leaking if not properly managed. Another commenter stated that having larger amounts of F006 on-site may result in increased risks because human or equipment malfunction may affect more

[1] Today's final rule does not allow accumulation of F006 waste on drip pads (as is provided in the existing accumulation regulations in 40 CFR 262.34) because F006 waste is not managed on drip pads, nor does the Agency believe that it would be appropriate to accumulate F006 waste on drip pads.

[2] 40 CFR 265.173.

than one super sack (container) which will therefore cause a release of more F006. This commenter was also concerned that the proposal would allow additional on-site treatment of F006, resulting in increased air emissions and increased chronic health risks. This commenter believes that much of the F006 treatment occurs in exempted wastewater treatment units (WWTUs) and accumulation units subject to subpart CC (which only addresses volatile organic air emissions), and that EPA should improve subpart CC standards and/or repeal the WWTU exclusion.

EPA disagrees that accumulating F006 on-site for a longer period of time, and in greater amounts, will lead to a greater likelihood of releases, and believes this rule is most likely to result in reduced releases overall. As discussed above, large quantity generators of F006 operating under the terms of today's rule must comply with the same unit-specific and general site operation provisions (e.g. personnel training, contingency planning, emergency response) that apply to generators operating under the existing 90-day regulations.

The unit-specific standards are not based on the length of time a hazardous waste is accumulated. Rather, these standards are essentially the same for small quantity generators of F006 (180–270 day accumulation), large quantity generators of F006 (90 day accumulation), and F006 permitted facilities (where the length of time a waste is stored may be a year or longer). With respect to the general site operation standards, EPA believes the 90-day accumulation standards are also sufficient to ensure protection of human health and the environment for F006 accumulation. In general, these standards require a generator to evaluate his or her particular site circumstances (which would include, for example, the length of time the F006 remains on-site and the total quantity accumulated on-site at any one time) and implement training, planning, and response measures appropriate to those circumstances. For example, in order to be in compliance with § 262.34(g)(4)(v) (which incorporates the existing 90-day general site operation provisions), generators accumulating F006 on-site under the terms of today's final rule should consider whether their current general site operation procedures (e.g. personnel training, contingency planning, etc.) should be modified in light of having more F006 on-site than they would under the 90-day limit.

Thus, EPA believes that these provisions are protective of human health and the environment even when the F006 waste is accumulated for more than 90 days. If an F006 waste is corrosive (F006 was not listed as a hazardous waste due to any corrosive characteristics), the Agency believes that the required inspections will ensure that any deterioration of containers caused by corrosion will be discovered prior to any significant release into the environment.

EPA also does not agree that having larger amounts of F006 on-site is likely to result in increased risks because human or equipment malfunction may affect more than one super sack (container) which will, therefore, cause a release of more F006. The *F006 Benchmark Study* indicates, and other information confirms, that most generators dewater F006 into a cake-like material to remove free liquids and to decrease the costs of accumulation, shipping, recycling and/or disposal. In the event of a spill of dewatered F006 sludge (e.g., a release caused by a rip or tear in a super sack), EPA believes the potential risk of harm to human health and the environment would be low compared to a spill of a free liquid or dust. Other available information corroborates this conclusion, indicating that the cake-like consistency of dewatered F006 sludge ensures that a spill of F006 waste, even of multiple containers, could be contained relatively easily. Spilled dewatered F006 sludge resulting from a release caused by a rip or tear in a super sack (or break in another accumulation unit) retains its solid-like consistency (because it still retains some moisture) and is not likely to run off as a free liquid or disperse in the wind like a dust, which will also result in a lower likelihood of air emissions from F006 accumulated on-site.

In addition, EPA believes the 180-day (or 270-day, as applicable) accumulation time could decrease the potential for releases of hazardous constituents from the handling of F006 waste. A recent review of damage incidents associated with the management of F006 waste (contained in the docket for this rulemaking) indicates that most of the reported incidents of releases of F006 waste were associated with the transfer of F006 waste from accumulation to transport vehicle, from transport vehicle to receiving facility, or while in transport. Because the 180-day (or 270-day, as applicable) accumulation time will mean that the F006 waste is transferred from generator to transporter to receiving facility less often, and that fewer shipments of F006 waste will be made, today's final rule should decrease the potential for releases of F006 waste into the environment. Similarly, workers will be required to handle the F006 waste less often (because transfers will occur less often), thereby decreasing their potential exposure to the F006 waste.

Finally, EPA does not agree with the comment that today's rule will lead to additional treatment activities resulting in significantly increased chronic health risks. For purposes of this discussion, it is important to distinguish between the treatment of electroplating wastewater and the treatment of electroplating wastewater treatment sludge. Most on-site ''treatment'' that occurs at metal finishing sites is treatment of electroplating wastewaters (not wastewater treatment sludge) in wastewater treatment units (WWTUs)—exempt units not affected by this rule. Increased wastewater generation, and subsequent wastewater treatment, would only be expected to occur as a result of increased process output (i.e., increased metal finishing activity), but this rule will not affect process output, nor will it change generators' treatment of wastewaters. The process output at electroplating facilities is dictated by market demand for electroplating services not by any factors related to how long the electroplater can accumulate the waste on-site. In addition, this rule does not affect exempt WWTUs. Thus issues related to wastewater treatment in exempt WWTUs are outside the scope of this rulemaking.

EPA also does not expect significant, if any, increases in treatment of wastewater treatment sludge as a result of this rule. Although the commenter is correct that the rule will allow longer accumulation time, this does not lead to the inference that they will undertake more treatment. Generators treat electroplating wastewater treatment sludge for a specific purpose and there is no reason to believe they would undertake additional treatment activities simply because they can hold the waste for a longer period of time. First, data from the F006 Benchmark Study indicate, and other available information confirms, that most F006 generators already conduct sludge drying or dewatering. Sludge drying and dewatering reduce the weight of the sludge and thus are usually conducted to save on transportation, disposal and recovery costs, which are largely based on weight. Because transportation and recovery costs for most affected facilities will be less under the final rule than they are currently, this rulemaking does not create an additional economic incentive to conduct additional sludge treatment. Second, this rule will not

result in increased production at electroplating shops and consequently, is not expected to increase the volume of electroplating wastewater sludge generated, or the rate at which it is generated. The process output at electroplating facilities is dictated by market demand for electroplating services not by any factors related to how long the electroplater can accumulate the waste on-site. Third, electroplaters generally do not have excess space to put in additional treatment units. If there were excess space, information available to EPA indicates that plant managers would opt to install additional production units. Finally, new treatment units would require additional investment and resources to install and operate, with little clear benefit to be derived from these added costs, compared to the advantages of installing additional production equipment.

Although unlikely, if, as a consequence of this rule, a generator were to conduct any additional on-site treatment of electroplating wastewater treatment sludge in accumulation units, EPA does not agree that such treatment will result in increased risk. With the exception of the changes in accumulation periods contained in the rule, all other conditions for 90-day accumulation apply. EPA believes the standards for accumulation which the generator of F006 must meet ensure protection of human health and the environment, even if the amount of F006 accumulated (including treatment) on-site increases. In order to accumulate F006 without a RCRA permit, F006 generators operating under the terms of this rule must comply with the same unit-specific and general site operation (*e.g.,* personnel training, contingency planning, emergency response) provisions that apply to generators of F006 operating under the existing 90-day regulations. The unit-specific standards are not based on the amount of F006 hazardous waste accumulated. To the contrary, these standards are essentially the same for small quantity generators of F006 (180–270 day accumulation), large quantity generators of F006 (90 day accumulation), and F006 permitted facilities. The commenter is correct that the 40 CFR part 265 subpart CC standards do not control inorganic emissions. However, metals, with the exception of mercury, which is unlikely to be found in significant concentrations in F006, have a high melting point and low volatility and are therefore unlikely to release volatile emissions. Thus, EPA does not agree there will be increased risk from on-site treatment of F006 in accumulation units simply because generators may accumulate a greater quantity of F006 under this rule.

Finally, to accumulate F006 under the terms of this rule, generators must implement pollution prevention measures, which occur prior to generation of F006. Because some of these pollution prevention activities are designed to reduce the toxicity of the F006 generated at a particular facility, they should also result in reduced risks from any on-site treatment activities.

Some commenters were concerned that sludge drying and dewatering, which were identified in the proposal as pollution prevention practices, could increase air emissions. In response to this and other comments, EPA has narrowed the pollution prevention condition in the final rule to include ''practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling.'' This change, and explanatory language in the preamble (see section IV.A.), clarifies that sludge drying and dewatering (or any other measure that merely reduces the volume of the waste) are not considered pollution prevention for purposes of meeting the pollution prevention condition of this rule. Thus, as indicated above, EPA does not expect this activity to increase as a result of this rule.

IV. Special Conditions for Accumulating F006 for 180 (or 270) Days

In today's final rule, large quantity generators of F006 waste are allowed up to 180 days (or up to 270 days, under certain circumstances) to accumulate F006 waste on-site in tanks, containers or containment buildings without a RCRA permit or interim status, provided that the generator: (1) Has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutant, or contaminant entering F006 or otherwise released into the environment prior to its recycling, (2) recycles the F006 waste by metals recovery, (3) accumulates no more than 20,000 kilograms of F006 waste at any one time, and (4) complies with the applicable management standards in this rule. A detailed discussion of the first three conditions follows in the next three subsections of this preamble. Further detail about the applicable management standards is in Section V.E. of this preamble.

A. Pollution Prevention Practices

The primary goal of today's rule is to encourage more recycling through metals recovery of F006. It also has the goal of increasing pollution control measures, prior to the generation of F006, which can make F006 less hazardous for subsequent management and more amenable for metals recovery. Thus, today's rule includes a condition that in order to accumulate the F006 on-site for 180 days (or 270 days, as applicable), large quantity generators of F006 must implement pollution prevention practices that reduce the amount of any hazardous substance, pollutant or contaminant entering F006 or otherwise released into the environment prior to its recycling. In response to comments, this condition of the final rule has been slightly modified from the proposal. This modification is discussed below.

Within the metal finishing industry, generators have implemented a variety of pollution prevention practices (including product substitution, drag-out and counter-current flow rinse systems, flow restrictors, evaporation recovery systems, plating bath reuse, ion exchange systems, and segregation of wastewater streams) to improve process efficiency, cut waste generation and waste management costs, and improve compliance. Table 1 summarizes several categories of pollution prevention practices that are commonly used within the metal finishing industry. These practices reduce the volume and toxicity of the F006 waste generated or make the F006 waste more amenable for metals recovery. Any generator that already has pollution prevention practices in place which reduce the amount of hazardous substances, pollutants or contaminants entering F006 or otherwise entering the environment prior to its recycling would not be required to implement additional pollution prevention practices.

For example, rinse water reduction techniques reduce the volume of effluents discharged from metal finishing processes. Drag-out reduction measures reduce the volume and can reduce the toxicity of effluents discharged from metal finishing processes. Implementation of these methods of pollution prevention promotes protection of human health and the environment because the F006 sludge produced is reduced in volume or toxicity.

Pollution prevention measures such as these may, however, also increase the concentration of pollutants in F006 sludge, including recyclable metals (*e.g.*

copper, zinc, nickel) and non-recyclable toxic pollutants (*e.g.* cyanide, cadmium). Increasing the concentration of recoverable metals in F006 sludge can increase the sludge's value as a secondary material, but increasing the concentration of non-recyclable pollutants (*e.g.* cyanide, cadmium), which pass through the recovery process and must be properly managed and disposed of can pose potential problems for the management and handling of recycling residues. Of course, this relationship between pollution prevention practices and metals recovery is highly dependent on the specific production process and the pollution prevention practices that are employed. For example, some recovery technologies such as ion exchange work better on dilute wastewaters than on wastewaters with higher metal content.

Chemical substitution pollution prevention measures reduce or eliminate toxic substances that are used in the plating process and found in the wastes and therefore are desirable from an environmental perspective wherever they can appropriately be applied. For example, trivalent chromium can be substituted for highly toxic hexavalent chromium in a few applications. In many applications, this substitution may not be possible. Many metal finishers have reduced or eliminated cyanide and cadmium use by substituting other materials, or by ceasing certain plating operations. Chemical substitution pollution prevention practices are generally more protective of human health and the environment because they eliminate or reduce the amount of toxic pollutants in the sludge, and produce sludge that is more amenable for metals recovery (by reducing the amount of non-recyclable toxic pollutants in the sludge).

The number and type of pollution prevention measures used by individual generators vary broadly. The most common pollution prevention measures include drag-out and rinse water reduction methods, which may improve effluent quality and the amount of metals recovered from F006 sludge. The data available to EPA suggest that chemical substitution pollution prevention measures are used less frequently than rinse water and drag-out reduction techniques. EPA encourages generators to make greater progress in reducing the quantity of non-recyclable toxic pollutants that pass through recovery processes and are ultimately disposed of in landfills. The Agency, therefore, urges generators operating under the provisions of today's rule to implement chemical substitution pollution prevention measures to reduce or eliminate the amount of toxic pollutants (*e.g.* cadmium, cyanide, arsenic, hexavalent chromium, or halogenated or chlorinated solvents) contained in F006 sludge that are not economically recoverable from F006 waste.

In its proposed rule, EPA placed the following condition in § 262.34(g)(1) to promote source reduction and recycling of F006 wastes:

''(1) The generator has implemented pollution prevention practices that reduce the volume or toxicity of the F006 waste or that make it more amenable for metals recovery.''

EPA requested comment generally on this condition and asked specifically whether more specific pollution prevention practices should be included in this rule. One commenter believed that EPA should be more specific in its pollution prevention condition in order to make the condition more meaningful. Several other commenters did not believe that a generator should be required to implement any specific set of pollution prevention practices in order to qualify for use of the 180-day (or 270-day, as applicable) accumulation time, and that a generator that already implements pollution prevention practices should not have to adopt new ones in order to qualify for the longer accumulation period. In addition, many commenters felt that the proposal did not clearly define ''pollution prevention,'' that the proposal allowed activities that are not source reduction activities (*e.g.* sludge dewatering and sludge drying), and that EPA should consider dropping the pollution prevention requirement altogether (or requiring waste minimization instead). One commenter questioned how a generator would demonstrate compliance with this condition.

For purposes of this rule, EPA defines ''pollution prevention'' to mean the source reduction of metal and other toxic raw materials that would otherwise enter a waste stream or be released to the environment prior to recycling, treatment, or disposal. EPA agrees with the commenters who expressed concern that the proposed condition could allow activities that would not be source reduction activities. The wording of the proposed condition (''pollution prevention practices that reduce the *volume or toxicity* of the F006 waste *or that make it more amenable for metals recovery*'' (emphasis added)) may have allowed activities that are clearly not source reduction activities. For example, activities that merely reduce waste volume, such as sludge dewatering and sludge drying, do make F006 more amenable for metals recovery, but they are not considered source reduction, and thus they are not pollution prevention activities. Table 1, discussed in the preamble to the proposed rule and in today's preamble, illustrates a large variety of pollution prevention practices that are widely used in the metal finishing industry to reduce volume or toxicity of materials that enter the waste stream (*i.e.* prior to waste generation), and also make it more amenable to metals recovery. Filter presses, sludge dewatering and sludge drying practices, incorrectly identified as pollution prevention measures in the proposed rule, merely remove water after the F006 is generated to reduce weight and volume and to make the sludge more amenable to subsequent recovery techniques. Filter presses, sludge dewatering and sludge drying practices are not consistent with the widely accepted definition of pollution prevention through source reduction contained in the Pollution Prevention Act of 1990.[3] A generator using only filter presses, dewatering or sludge drying practices would not be considered in compliance with the pollution prevention condition in today's rule. Therefore, in response to this and other comments, the Agency has modified the regulatory language to include a more precise description of ''pollution prevention'' and the scope of activities that may be implemented in accordance with this condition. Section 262.34(g)(1) has been revised to read:

''(1) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling;'' This revised language in today's rule removes the unintended ambiguity that was contained in the previous language and is consistent with the definition of pollution prevention through source reduction contained in the Pollution Prevention Act.

EPA agrees with commenters who warn against requiring a specific set of pollution prevention practices. The technical and economic variables that affect the feasibility of using one or more specific pollution prevention practices at a particular generator's site are so broad and complex that EPA does not believe it is possible or appropriate to specify by rule any particular approach for all generators. The best approach for one generator may be quite different than the best approach for

[3] Pub. L. 101–508, November 5, 1990 (Omnibus Budget Reconciliation Act of 1990), as amended by Pub. L. 102–389, October 6, 1992.

another generator, and the Agency believes it is important to allow generators the flexibility to maximize the effectiveness of their pollution prevention activities by selecting and designing the approach that best fits their specific situation. Under today's rule, large quantity generators of F006 waste may implement pollution prevention practices that are best suited to their specific metal finishing processes and plating operations. It is important to note that EPA believes that generators that are already implementing pollution prevention practices should not have to adopt new pollution prevention practices to comply with this rule. However, the Agency encourages, but does not require, metal finishers to thoroughly explore additional available pollution prevention techniques and to implement those that most effectively reduce the amount of any hazardous substance, pollutant or contaminant in F006 prior to onsite recycling activities that occur after the sludge is generated (*e.g.* dewatering and sludge drying).

EPA believes it is overly broad to refer to the pollution prevention condition of today's rule as ''waste minimization.'' Waste minimization includes both source reduction and recycling. By using the term ''pollution prevention,'' EPA intends to capture only one element of ''waste minimization,'' *i.e.* source reduction, which is consistent with the definition contained in the Pollution Prevention Act. As mentioned previously, this requirement was included in the rule because pollution prevention measures can make F006 less hazardous for subsequent management and possibly more amenable for metals recovery. Today's rule, therefore, retains the condition that generators must implement pollution prevention measures.

Regarding what kind of demonstration must be made to verify compliance with the pollution prevention condition, the final rule does not include any recordkeeping or reporting requirements specific to this condition. Generators accumulating F006 on-site under the terms of this rule should be prepared to demonstrate, at the request of EPA or the State, that they are implementing pollution prevention measures for F006. Such a demonstration could include, for example, indicating to the requesting official particular technologies or process changes that have been installed to reduce the amount of toxic materials entering the on-site wastewater treatment system or directly discharging into navigable waters. EPA believes it is relatively simple to determine through discussion or direct observation whether a particular facility is using pollution prevention technologies. The Metal Finishing Workgroup, for example, used a checklist to profile operations in 29 facilities (which is available in the docket for this rule). Also, many State pollution prevention and compliance assistance offices have developed checklists for assessing pollution prevention activities, particularly for metal finishing operations (see, for example, http://www.p2.org). Consequently, EPA believes regulated industry can easily identify what practices would qualify as pollution prevention, and that EPA and State field inspectors, compliance assistance personnel, and pollution prevention technical assistance staff can easily determine whether or not companies are using pollution prevention in compliance with this rule.

TABLE 1.—EXAMPLES OF POLLUTION PREVENTION MEASURES

Method	Pollution prevention benefits
Improved Operating Practices	
Remove cadmium and zinc anodes from bath when it is idle. Anode baskets can be placed on removable bars that are lifted from tank by an overhead hoist.	—Eliminates cadmium/zinc buildup causing decanting of solution due to galvanic cell set up between steel anode basket and cadmium/zinc anodes. —Maintains bath within narrow Cd/Zn concentration providing more predictable plating results.
Eliminate obsolete processes and/or unused or infrequently used processes.	—Reduces risks associated with hazardous chemicals. —Creates floor space to add countercurrent rinses or other P2 methods. —Creates safer and cleaner working environment.
Waste stream segregation of contact and non-contact wastewaters	—Eliminates dilution of process water prior to treatment which can increase treatment efficiency. —Reduces treatment reagent usage and operating costs.
Establish written procedures for bath make-up and additions. Limit chemical handling to trained personnel. Keep tank addition logs.	—Prevents discarding process solutions due to incorrect formulations or contamination. —Improves plating solution and work quality consistency. —Improves shop safety.
Install overflow alarms on all process tanks to prevent tank overflow when adding water to make up for evaporative losses.	—Minimizes potential for catastrophic loss of process solutions via overflow. —Prevents loss of expensive chemicals.
Conductivity and pH measurement instruments and alarm system for detecting significant chemical losses.	—Identifies process solution overflows and leaks before total loss occurs. —Alerts treatment operators to potential upset condition. —Reduces losses of expensive plating solutions.
Control material purchases to minimize obsolete material disposal	—Reduces hazardous waste generation. —Reduces chemical purchases.
Use process baths to maximum extent possible before discarding. Eliminate dump schedules. Perform more frequent chemical analysis.	—Prevents discarding of solutions prematurely. —Reduces chemical costs. —Improves work quality with chemical adjustments of baths.
Reduce bath dumps by using filtration to remove suspended solids contamination.	—Extends bath life. —Reduces solid waste generation by reusing filter cartridges. —Improves bath performance.
Process/Chemical Substitution	
Substitute cyanide baths with alkaline baths when possible	—Eliminates use of CN.

TABLE 1.—EXAMPLES OF POLLUTION PREVENTION MEASURES—Continued

Method	Pollution prevention benefits
Substitute trivalent chromium for hexavalent chromium when product specifications allow.	—Reduces/eliminates use of hexavalent chromium.
Eliminate use of cadmium plating if product specifications allow	—Elminates the use of cadmium.
Drag-Out Reduction Methods That Reduce Waste Generation	
Install fog rinses or sprays over process tanks to remove drag out as rack/part exits bath.	—Can inexpensively recover a substantial portion of drag out and does not require additional tankage. —Reduces pollutant mass loading on treatment processes, treatment reagent usage, and resultant sludge generation.
Minimize the formation of drag out by: redesigning parts and racks/barrels to avoid cup shapes, etc. that hold solution; properly racking parts; and reducing rack/part withdraw speed.	—May improve treatment operation/removal efficiency. —Reduces chemical purchases and overall operating costs.
Rinse Water Reduction Methods That Reduce Waste Generation	
Install flow restrictors to control the flow rate of water	—Reduces water and aids in reducing variability in wastewater flow. —Is very inexpensive to purchase and install.
Install conductivity or timer rinse controls to match rinse water needs with use.	—Coordinates water use and production when properly implemented. —Provides automatic control of water use.
Use counter-current rinse arrangement with two to four tanks in series depending on drag-out rate.	—Can achieve major water reduction. —Has high impact on water bills. —May reduce the size of recovery/treatment equipment that is needed.
Track water use with flow meters and accumulators. Keep logs on water use for individual operations.	—Identifies problem areas including inefficient processes or personnel. —Helps management to determine cost for individual plating processes.

B. Metals Recovery

This final rule is designed to create an incentive for large quantity generators of F006 waste to choose recycling through metals recovery instead of treatment and land disposal as their final waste management option for F006 waste. As discussed in Section III.A., EPA is providing 180 days (or 270 days under certain circumstances) for accumulation to eliminate the impediment to F006 recycling created by the 90-day limit for on-site accumulation. The longer accumulation period is available only if the accumulated F006 waste is recycled through metals recovery. In response to comments, EPA has made one change to this requirement from the proposal.

As proposed, only large quantity generators of F006 who send the F006 waste off-site for metals recovery (as well as meeting the other conditions) would have been allowed 180 days (or 270 days, as applicable) to accumulate those wastes on-site. At the time of proposal, the Agency stated that, although reduced transportation costs would not affect on-site metals recovery, there may be other problems related to on-site metals recovery that a longer accumulation period could address. For example, it may be necessary to accumulate enough F006 waste to make some type of on-site batch metals recovery process more cost effective. The Agency, therefore, requested comment on whether large quantity generators who recycle their F006 on-site by metals recovery should also be allowed 180 days to accumulate those wastes on-site.

The Agency received several comments on the proposal in favor of including large quantity generators of F006 who recycle through on-site metals recovery. Some pointed out that the decrease in transportation of F006 waste over highways may lessen overall potential risks to human health and the environment. One commenter stated that on-site recovery methods may prove environmentally superior to off-site methods, but that some recovery methods could result in increased cross-media impacts which may not be adequately controlled by the standards imposed by the proposal. This commenter suggested that EPA should further investigate these and other issues rather than expand the rule.

After considering these comments, EPA has decided to modify the rule to include large quantity generators of F006 who recycle F006 on-site for metals recovery. EPA is not currently aware of any generators who are presently performing metals recovery on-site. Members of the metal finishing industry stated during the CSI process that, due to space considerations at their electroplating sites, installation of on-site metals recovery equipment would be unlikely, and, if space did become available, they would be more likely to install extra electroplating equipment rather than recycling equipment. While EPA does not have any data indicating whether on-site recycling will increase, the Agency is concerned that a rule providing a longer accumulation period only for off-site metals recovery may inadvertently create an incentive against utilizing, and thereby discourage the development of, on-site metals recovery. This result may be of particular importance because, as some commenters suggested, on-site metals recovery may be environmentally superior to off-site metals recovery. The Agency believes that the technologies that would be employed for on-site recycling of F006 would be the same as those presently used for off-site recycling of F006 that are appropriate for small volumes. Also, the unit-specific regulatory controls would be the same. The Agency further believes that the recycling of F006 through metals recovery on-site may be more protective overall of human health and the environment because it will require less transportation of the F006, and transportation-related activities have been the cause of most of the F006 releases to date. In addition, including on-site recovery in today's rule is consistent with the primary goal of encouraging recycling over treatment and land disposal. Because the 180-day accumulation period would only be available for large quantity generators who recycle F006 for metals recovery, and we are not aware that on-site metals recovery is currently occurring or contemplated, EPA expects that generators who are not sending F006 off-site for metals recovery would only

take advantage of the 180-day accumulation period where it would actually facilitate on-site metals recovery. Therefore, today's final rule allows large quantity generators of F006 180 days (or 270 days, as applicable) to accumulate those wastes prior to metals recovery performed either on-site (*i.e.*, at the generator's site) or off-site, provided all other conditions of today's final rule are met. The standards for 180-day (or 270-day, as applicable) accumulation included in today's rule will ensure that on-site accumulation is protective of human health and the environment, whether that accumulation precedes on-site or off-site metals recovery. Only the amount of time large quantity generators may accumulate F006 (without a permit or interim status) on-site if they are recycling F006 on-site for metals recovery is affected by today's final rule.

EPA received several comments on other issues related to the metals recovery condition of the rule. Several commenters sought clarification of whether F006 must be sent directly to a metals recovery facility in order to meet the metals recovery condition of the rule. Specifically, questions were raised regarding intermediate processors, waste brokers, and other intermediate handlers. Additionally, some commenters questioned whether facilities that recycle wastes into animal feed or soil amendments and primary metals smelters are considered metals recovery facilities.

In response, EPA notes that the proposed condition that F006 must be ''sent off-site for metals recovery'' did not require that F006 be sent directly from the generator to the metals recovery facility. It was never EPA's intent to preclude generators from sending F006 for metals recovery by way of intermediate handlers (*e.g.*, persons conducting transportation, intermediate storage, repackaging or reshipping) or intermediate processors (*e.g.*, persons conducting pre-metals recovery processing steps). Rather, EPA believes including such multi-step management processes in the rule will ensure that the largest number of generators are able to take advantage of the rule, and that the amount of F006 recycled is maximized. The Regulatory Impact Analysis (RIA) conducted in support of the proposed rule included both metal recovery facilities and intermediate processors as shipment destinations when estimating transportation and other costs. Specifically, data used in the model that estimated transportation costs was based on observed shipments to metals recovery from the 1995 Biennial Report Survey. These observations included both shipments directly to metals recovery facilities and to intermediate processors who subsequently ship to metals recovery facilities. Similarly, the cost model used fees charged both by metals recovery facilities and by intermediate processors. The RIA demonstrates that generators who are able to accumulate larger loads of F006 will experience lower transportation costs and administrative costs whether they are shipping directly to a metals recovery facility or to an intermediate processor. Since the transportation patterns would be the same, the same transportation cost analysis would also apply to intermediate handlers who simply repackage or consolidate F006 prior to delivery to a metals recovery facility.

Today's rule retains this metals recovery condition essentially as proposed (it has been modified to include on-site metals recovery). Specifically, EPA considers F006 sent by a generator to an intermediate processor to be sent for ''metals recovery'' if the intermediate processor then sends the processed material to a facility which extracts the metals (such as a smelter or a metallurgical extraction facility). For purposes of this rule, EPA defines an intermediate processor as a recycler who handles the F006 after the generator and before the ultimate metals extraction facility (*e.g.*, the smelter) and who makes the F006 more amenable for metals recovery through processes such as drying, blending, and/or concentrating. Large quantity generators of F006 who perform intermediate processing activities on-site before sending the waste to a metals reclamation facility are also allowed up to 180 days (or 270 days, if applicable) to accumulate that waste under today's final rule. However, generators performing intermediate processing on-site who need to hold the waste after the accumulation period has expired are required to have a RCRA permit.

In response to the question of whether primary metals smelters and facilities that recycle wastes into animal feed or soil amendments are considered metals recovery facilities, under EPA regulations, recycling is defined as either the use, reuse or reclamation of a material (40 CFR 261.1(c)(7)). EPA defines reclamation as either recovery of a useful product or regeneration of a product for its original use (40 CFR 261.1(c)(4). Under EPA's hazardous waste regulations, recovery is defined as the recovery of *distinct components of a secondary material as separate end products* (40 CFR 261.1(c)(5)(i)). Examples of recovery and regeneration are recovering copper from electroplating sludge like F006 or regenerating a spent solvent for its original use. When distinct components, such as metals, are not separated from the material in which they are constituents, recovery has not occurred. Thus, if F006 were to be incorporated directly into either animal feed or fertilizer without first separating the metals, this would not constitute metals recovery. Therefore, F006 sent for this type of recycling would not be sent for ''metals recovery.'' However, as long as legitimate metals recovery occurs (*i.e.*, distinct components of the F006 waste are recovered as separate end products) the rule would apply, regardless of the ultimate use of the end products.

Regarding primary metals smelters, one commenter appeared to be unclear about whether F006 processed at smelters was considered to be used or reused as an ingredient in an industrial process to make a product, or used or reused as an effective substitute for a commercial product (see 40 CFR 261.2(e)(1)(i) and (ii)). If F006 were used or reused in these ways, it would not be considered a solid or hazardous waste and would therefore would not be subject to hazardous waste managements controls, including use of a hazardous waste manifest. However, the Agency believes that these use/reuse exemptions do not apply to F006 sent to a primary smelter for metals recovery.

40 CFR 261.2(e)(1)(i) specifically provides that materials are not considered to be used or reused as an ingredient in an industrial process to make a product if they are being reclaimed. 40 CFR 261.1(c)(5)(i) provides additionally that materials will not satisfy the ''use as an ingredient'' exclusion of 40 CFR 261.2(e)(1)(i) ''if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials.)'' For these reasons, EPA is today clarifying that F006 sent to a smelter is generally not eligible for the exclusions at 40 CFR 261.2(e)(1)(i) and 261.2(e)(1)(ii) since the purpose of sending F006 to a smelter is to recover its metal components. The material would therefore generally be considered a solid and hazardous waste and subject to all applicable RCRA hazardous waste management controls (including use of a hazardous waste manifest).

Another commenter on the metals recovery condition of the rule stated that neither the proposal nor the existing regulatory framework are structured so that only legitimate materials recovery is encouraged. According to this commenter, under the

existing framework legitimacy determinations are largely self-implementing and misuse will not be avoided until there are clear and more objective legitimacy criteria and/or there is greater and more timely review of the legitimacy claims.

The same commenter stated that several factors result in an implementation structure incapable of ensuring that the materials recovery practices employed under the proposal will be legitimate. These include the wide variety of F006 operations; the wide array of constituents in the wastes (many of which would not be recycled); the lack of generator resources; and the lack of Agency oversight. In addition, according to the commenter, nothing in the proposal requires the generator to segregate waste streams so that toxics ''along for the ride'' are minimized.

EPA agrees that recovery of materials from F006 wastes, like any recovery of materials, must be legitimate to prevent participants from disposing of materials rather than actually recovering and reusing them. EPA also agrees that this rule will encourage F006 recovery operations.

EPA, however, does not agree that its current rules and policies to prevent ''sham'' recycling operations are insufficient. For example, the Agency has adequately described the F006 legitimacy criteria in existing regulatory and policy documents (see discussion below). In addition, any revision to the criteria is outside the scope of this rulemaking. EPA has promulgated many rules that encourage recycling which rely on the existing policy and regulatory structure to ensure that the recycling involves legitimate reuse of materials. See, for example, the conditional exemption for secondary materials used for recovery within the primary mineral processing industry in 40 CFR 261.4(a)(16) (which requires that materials be ''legitimately recycled'' without promulgating new rules to define the term). Although EPA acknowledges that this scheme is complex, EPA believes that recycling, under current regulatory restraints and policy, is beneficial, and its regulations have long reflected this. The commenter has not presented any data or examples showing that the current approach is generally inadequate, nor has the commenter submitted any information showing that factors unique to F006 recovery operations make the current approach less effective or less suitable than it is for other wastes.

EPA has existing policy guidance on legitimacy (see discussions at 53 FR 522 (January 8, 1988), 54 FR 17013 (May 6, 1987), 50 FR 638 (January 4, 1985) and F006 Recycling Memo, signed by Sylvia Lowrance on April 26, 1989). As described in this guidance, evaluating legitimacy can in some cases require complex analysis of site specific characteristics and factors to determine whether the secondary material is ''commodity-like.'' The presence of toxics ''along for the ride'' is a factor in this determination. EPA currently believes that determining whether recycling processes are legitimate requires case-by-case evaluations of many factors that vary depending on the specific materials and processes used. EPA does acknowledge that such evaluations are often complex and time-consuming since F006 wastes and recovery operations involve a fairly wide variety of materials and operations which must be evaluated on a case-by-case basis.

In addition, the commenter did not present any specific proposal for improving assessment of the legitimacy of F006 recovery operations that could be applied in this rulemaking. It would be difficult (if not impossible) to evaluate F006 legitimacy generically rather than on a case-by-case basis. EPA is not aware of any information undercutting its longstanding view that this case-by-case approach has been effective at ensuring legitimate recycling. In the regulatory language being promulgated in this final rule (see new § 262.34(g)(2)), EPA has added the word ''legitimate'' to clarify that the F006 must be processed using legitimate recycling in order to meet this condition of the rule. The addition of the word ''legitimate'' does not change any existing Agency regulations or policies on recycling, but merely emphasizes the Agency's intent.

Another issue raised by this commenter was that less legitimate recycling would occur as a result of the pollution prevention condition because there will be more toxics ''along for the ride.'' EPA acknowledges that it is possible that some pollution prevention practices that increase the concentration of non-recoverable toxics in the waste may be implemented under this rule, but the amount of non-recoverable toxics in the wastes (as opposed to the concentration of such toxics) will not increase. However, the Agency encourages metal finishers to carefully and thoughtfully select pollution prevention practices that will reduce levels of toxics that are not recovered, based on the specifics of their processes and design. The Agency also encourages implementing agencies to actively discuss the issues with metal finishers and to assist them, where possible, in choosing pollution prevention technologies. However, whether less legitimate recycling will occur depends on the pollution prevention technology used and the composition of the F006 sludge. As discussed previously, legitimacy determinations are better made on a case-by-case basis, and it is possible that in a situation where an F006 sludge contains a very high concentration of non-recoverable toxic constituents, the Agency could decide that it is not a legitimate recycling scenario under its existing policies on legitimacy.

Finally, given that most recycling processes generate residues, the Agency notes that generators may want to discuss the management of any residues from recycling operations with the recyclers to ensure that they are managed properly and to avoid any future liability from improper management (*e.g.,* under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

C. Limit on the Amount of F006 Waste That Can Be Accumulated

As discussed above, the purpose of today's rule is to remove an existing regulatory impediment to increased recycling of F006. The current 90-day limit on accumulating waste without a RCRA permit is preventing some large quantity generators of F006 from choosing recycling as a final waste management option. Although large quantity generators are not currently subject to any limits on how much waste they can accumulate on-site at any one time, many generators' process generation rates are such that they do not accumulate sufficient quantities of F006 to make recycling the waste a cost-effective option. EPA believes that it is appropriate to limit the flexibility provided by today's rule to what is reasonably necessary to advance the recycling objectives of the proposal. For this reason, the proposal, and today's final rule, include a limit on the total amount of F006 waste that may be accumulated on-site at any time. In response to comments, EPA has modified this portion of the rule from the proposal.

In the proposed rule, the Agency proposed setting a limit of 16,000 kilograms of F006 that could be accumulated on-site. The Agency proposed this limit because we believed that this amount was approximately the size of a truckload used to transport bulk solids. EPA requested comment on whether it was appropriate to impose any quantity limit to the on-site accumulation of F006 and whether

16,000 kg was an appropriate limit (as opposed to a different amount).

EPA received several comments on these issues. One commenter felt that the limit should be 6,000 kg, which is consistent with the quantity limit for small quantity generators. All other commenters on this issue stated that 16,000 kilograms did not accurately reflect the true size of a truckload for bulk solids (the physical form in which F006 is most commonly transported) based on experience with transportation of F006. In response, although EPA believes it is appropriate to limit the amount of F006 that can be accumulated on-site at any one time, EPA does not believe that the provisions for small quantity generators necessitate a similar 6,000 kg limit for large quantity generators, nor is it an appropriate amount in light of the recycling objectives of the rule. In addition, EPA proposed the 16,000 kg limit believing that it accurately represented a full truckload. In considering the comments disputing this assumption, the Agency investigated the issue further, and located existing information [4] which is consistent with many commenters' views on the weight of bulk solids that can be shipped in a full truckload. According to this confirmatory information, 20,000 kg is more representative of the full amount of bulk solids that would fill a truck. As discussed above, the purpose of the quantity limit is to delineate the minimum amount reasonably necessary to advance the recycling objectives of the proposal. Therefore, since the main goal of this final rule is to allow large quantity generators of F006 to accumulate enough F006 to facilitate the most economically efficient off-site shipment, the Agency has modified the rule to allow 20,000 kilograms of F006 to be accumulated on-site within the 180-day (or 270-day, as applicable) accumulation period in order to accomplish the maximum recycling benefit under this final rule.

Once a generator has accumulated 20,000 kilograms of F006 waste (regardless of whether the waste has been accumulated for less than 180 days, or 270 days if applicable), the generator is required to ship the F006 waste off-site for metals recovery, conduct metals recovery on-site, obtain an exception to the quantity limit under 40 CFR 262.34(i), or obtain a RCRA permit.

[4] U.S. EPA, Office of Regulatory Enforcement (DPRA, SAIC), Estimating Costs for the Economic Benefits of RCRA Noncompliance, September 1997, p. 5–3.

The Agency also requested comments on whether the accumulation limit should apply to the total quantity of F006 waste accumulated on-site or to the quantity of each separate mono-metal F006 waste stream (or other F006 waste streams segregated on the basis of metal content) that must be sent off-site to different metals recovery facilities. This request was based on the idea that a F006 generator could make F006 waste more amenable for metals recovery by generating mono-metal sludges.

EPA received several comments concerning the accumulation of mono-metal F006 sludges. Some commenters opposed expanding the proposal in this way, citing, among other things, concerns with increased risk and enforcement challenges. EPA also received comments requesting that the Agency apply the accumulation limit to each separate mono-metal F006 sludge generated at a site to facilitate metals recovery from each of these mono-metal sludges. The Agency encourages segregation of waste streams to make wastes more amenable to metals recovery, and does not believe that doing so would necessarily increase risks. However, at this time, the Agency does not have a standard for differentiating among the different types of F006 wastes, and none of the commenters suggested any such standard. Without further information, it would be extremely difficult to develop a standard that would be effective and implementable. For example, no definition exists for what constitutes a mono- or bi-metal sludge or how one F006 waste sludge differs compositionally from another F006 waste sludge (*i.e.,* what levels of other metals would be acceptable). Lacking such definitions or standards, it would not be possible at this time for the Agency to develop a regulatory provision allowing separate accumulation quantity limits for different F006 waste types. In addition, implementing and enforcing a separate accumulation limit for different types of F006 wastes would impose a significant burden on both generators and regulators with little or no corresponding benefit.

Finally, data from the *F006 Benchmark Study* shows, and other available information confirms, that very few metal finishers currently utilize separate wastewater treatment units to generate sludges that are compositionally different to improve recovery (*e.g.,* mono- or bi-metal sludges). Thus, at this time EPA believes that very few generators would benefit from separate limits for separate mono-metal sludges (or other sludges that differ from one another by composition). Past discussions with metal finishers in the CSI effort (as well as observations at metal finishing plants) corroborate this conclusion, indicating that most small metal finishing shops generally do not have the space or capital to install separate wastewater treatment units, filter presses or containers in which to manage mono-metal sludges.

Thus, although the Agency strongly encourages segregation of waste types to improve the recyclability of F006, for the reasons discussed above the quantity limit in the final rule applies to the total amount of F006 accumulated on-site at any one time, as was proposed.

V. Summary of Final Rule

A. Scope and Applicability

This final rule is limited to large quantity generators of F006 waste who accumulate F006 on-site for more than 90 days without a RCRA permit or interim status.

In 40 CFR 261.31, F006 waste is defined as:

> Wastewater treatment sludges generated from electroplating operations, except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

In listing electroplating wastewater treatment sludges as hazardous waste, EPA identified several hazardous constituents, including cadmium, hexavalent chromium, nickel, and complexed cyanides that could pose a substantial hazard to human health and the environment if the sludge was mismanaged. The potential hazards associated with the constituents of concern in the sludge and the potential for improper management of the electroplating wastewater treatment sludges served as the basis for listing the sludge as hazardous waste F006. The listing status of the waste is not affected by this final rule.

The physical form of F006 waste can generally be described as a mixed metal hydroxide wastewater treatment precipitate which is 24 to 50 percent solids by weight. Other physical forms of this material can include spent ion exchange columns or iron precipitation solids. F006 sludges may contain metals with commercial value that can be recovered from the sludges. The metals recovered from these sludges are most often concentrates and intermediate materials that require further processing

before a commercially usable metal is produced. Often, the metals contained in these industrial sludges are recovered in the form of a metal oxide or salt (e.g., lead oxide, lead chloride, lead sulfate) through High Temperature Metals Recovery (HTMR) such as smelting operations.

Any large quantity generator (generators of 1,000 kilograms or more of hazardous waste per calendar month) who generates F006 may accumulate the F006 waste generated on-site for up to 180 days (or 270 days, under certain circumstances) without a RCRA permit or interim status, provided they meet the conditions of this final rule. Large quantity generators of F006 are only required to meet the conditions of today's rule if they accumulate F006 on-site, without a RCRA permit or interim status, for more than 90 days; however, the conditions of today's rule must be met for the entire accumulation period. In response to comments, EPA has modified the regulatory language to clarify that 40 CFR 262.34(g), (h), and (i) apply only to generators who accumulate F006 on-site for more than 90 days, but not more than 180 (or 270) days. Any large quantity generator who generates some quantity of F006 hazardous waste may accumulate the F006 waste under the terms of today's final rule. The 180-day (or 270-day, if applicable) accumulation time, however, is only applicable to the F006 waste destined for metals recovery. Other hazardous waste accumulated on-site (including any F006 which will not be recycled by metals recovery) must be accumulated in accordance with the existing provisions for large quantity generators (e.g. 262.34(a), or parts 264, 265, and 270).

Currently, large quantity generators are allowed only 90 days to accumulate hazardous wastes on-site without a RCRA permit, and there is no limit on the amount of hazardous waste that can be accumulated on-site within that 90-day time period. In order to accumulate hazardous waste on-site without a RCRA permit, these large quantity generators must also comply with a number of unit-specific standards (e.g., tank and container standards), and standards for marking and labeling, preparedness and prevention, contingency plan and emergency procedures, personnel training, and land disposal restrictions, in order to accumulate hazardous waste on-site without a RCRA permit. The Agency is not changing any of the existing regulations applicable to large quantity generators in today's final rule, except to allow 180 days (or 270 days, as applicable) for accumulation of F006 wastes with a corresponding limit of 20,000 kilograms on the amount of F006 waste that may be accumulated on-site at one time. Large quantity generators of F006 must still comply with the standards required for all large quantity generators to accumulate hazardous waste on-site without a permit: unit-specific standards (e.g., tank and container standards) for accumulation units; marking and labeling, preparedness and prevention, contingency plan and emergency procedures, personnel training, and land disposal restrictions. These conditions are explained in more detail below in Section V. E. of this preamble.

Today's final rule does not apply to small quantity generators of hazardous waste (between 100–1000 kg per calendar month) and we have added language to the rule to clarify this. Currently, small quantity generators are allowed 180 days to accumulate hazardous wastes on-site without a RCRA permit or interim status. However, the existing regulations do not allow small quantity generators to accumulate more than 6,000 kilograms of hazardous waste on-site at any one time without a RCRA storage permit. Small quantity generators accumulating hazardous waste without a RCRA permit must also comply with unit-specific and general facility standards that are similar to those for large quantity generators. Today's final rule does not change any of the provisions currently applicable to small quantity generators accumulating hazardous waste without a permit.

The Agency believes that there is no need to specifically allow small quantity generators to take advantage of the benefits of today's final rule. First, these generators are already allowed to accumulate their waste on-site for up to 180 days (or 270 days, if applicable); thus, the 180-day time limit of today's rule is unnecessary for them. Second, the Agency believes that any small quantity generators who generate hazardous waste at a rate which would cause them to exceed their existing 6,000 kilogram on-site accumulation limit will actually be large quantity generators, and therefore will be able to take advantage of the flexibility in this final rule for accumulating larger quantities of F006, as long as they meet the conditions of today's rule.

B. Special Conditions for 180-Day (or 270-Day) Accumulation Time

Today's rule includes several conditions that do not typically apply to the accumulation of hazardous waste by large quantity generators. These conditions are that the generator: (1) Has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling, (2) recycles the F006 waste by metals recovery, and (3) accumulates no more than 20,000 kilograms of F006 waste at any one time. EPA has included these conditions in the rule to ensure that the recycling objectives of this rule are met, and to ensure that the flexibility provided by today's rule is limited to that which is reasonably necessary to achieve those recycling objectives. Each of these conditions is discussed in further detail in Section IV above.

C. Additional Accumulation Time Under Certain Circumstances

1. Transport 200 Miles or More

Under today's final rule, large quantity generators of F006 waste have up to 270 days to accumulate F006 waste on-site without a RCRA permit or interim status if the generator must transport the waste, or offer the waste for transport, a distance of 200 miles or more for off-site metals recovery. The generator must still meet the other conditions of today's rule—i.e., implement pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling, recycle the F006 waste by metals recovery, not accumulate more than 20,000 kilograms of F006 waste at any one time, and comply with the applicable management standards in the proposed rule.

As with the other provisions of this final rule, this provision is intended to allow large quantity generators sufficient time to accumulate enough F006 waste to make recycling this waste by metals recovery more cost effective. Shipping F006 waste to a metals recovery facility that is located more than 200 miles away will cost more than shipping F006 waste to a local (i.e., less than 200 miles away) hazardous waste landfill. For those large quantity generators of F006 waste that do not accumulate enough F006 waste to fill a truck load (i.e., 20,000 kilograms of F006 waste) within 180 days and are located more than 200 miles from a metals recovery facility, treatment and disposal of the F006 waste in the local hazardous waste landfill may be a less expensive management option than metals recovery. For those large quantity generators of F006 waste that are located long distances from a metals recovery

facility, allowing up to 270 days for accumulation is reasonable to allow generators to accumulate more F006 waste to get closer to a full truckload for off-site shipment. The 270-day accumulation period will be particularly helpful for large quantity generators of relatively small amounts of F006 waste (i.e., those that do not accumulate more than 20,000 kilograms of F006 waste in 180 days and that must ship the F006 off-site more than 200 miles to a metals recovery facility) and may provide them with an incentive to send their F006 waste to a metals recovery facility rather than to a treatment and disposal facility.

2. Unforeseen, Temporary, and Uncontrollable Circumstances

Today's final rule also provides for an extension of the accumulation period if the generator's F006 waste must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. Under these circumstances, the generator may request that the EPA Regional Administrator or authorized state grant an extension of up to 30 days. This provision is intended to provide the generator with some temporary relief until the unforeseen, temporary, and uncontrollable circumstances can be rectified. The Agency has previously identified the following circumstances as possible rationales for granting this extension: a facility's refusal to accept waste, transportation delays, or labor strikes (see 47 FR 1248, 1249, January 11, 1982). These extensions will be granted at the discretion of the EPA Regional Administrator or the authorized state on a case-by-case basis. This provision is the same as the provision for large quantity generators in the existing regulations at 40 CFR 262.34(b).

In addition to this extension to the time limit, exceptions to the quantity limit are also available at the EPA Regional Administrator's discretion. Because this final rule sets an accumulation limit of 20,000 kilograms of F006 waste that can be accumulated on-site at any one time, today's final rule also allows a large quantity generator to request permission to accumulate more than 20,000 kilograms of F006 waste if more than 20,000 kilograms must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. The rationale for requiring additional time to accumulate F006 waste on-site due to unforeseen, temporary, and uncontrollable circumstances is equally applicable for accumulating more than 20,000 kilograms under the same kinds of circumstances.

In response to a comment, the regulatory text in this final rule has been modified from the proposal to clarify that, in addition to time limit extensions, accumulation limit exceptions are available.

D. Summary of Applicable Management Standards

Under today's final rule, the same standards applicable to 90-day on-site accumulation of hazardous waste under 40 CFR 262.34, other than the length of time that large quantity generators of F006 waste can accumulate the waste on-site without a RCRA permit,[5] apply to 180-day (or 270-day, as applicable) accumulation of F006 waste. These include technical standards for units used to accumulate hazardous wastes, recordkeeping standards to document the length of time hazardous wastes are accumulated on-site, preparedness and emergency response procedures, and personnel training. While EPA is not changing any of these existing standards in today's rulemaking, the Agency would like to note that in order to be in compliance with § 262.34(g)(4)(v) (which incorporates the existing general site operation provisions), generators accumulating F006 on-site under the terms of today's rule may need to consider whether their current general site operation procedures (*e.g.,* personnel training, contingency planning) should be modified in light of having more F006 on-site than they would under the 90-day limit. The existing management standards as they apply to large quantity generators of F006 waste under this final rule are summarized below. The Agency is not making any changes or amendments to these standards in today's final rule, other than clarifying that these standards apply to large quantity generators of F006 accumulating the waste up to 180 days (or 270 days where applicable) without a RCRA permit.

1. Accumulation Units

A large quantity generator of F006 waste may only accumulate the F006 waste on-site for up to 180 days (or 270 days, if applicable) in tanks, containers, or containment buildings which comply with the unit-specific technical standards of 40 CFR part 265 for containers (subpart I), tanks (subpart J), and containment buildings (subpart DD). In addition, generators accumulating F006 in containers or tanks must also comply with the air emission standards of 40 CFR part 265, subparts AA, BB, and CC.

The unit-specific standards in 40 CFR part 265 include provisions for the design, installation and general condition of each unit. The requirements governing each type of unit include standards for ensuring the compatibility of the waste and the unit and special requirements for ignitable, reactive or incompatible wastes. In addition, there are provisions for performing inspections to monitor for leaks and deterioration of the unit and for proper response to and containment of releases. For example, the container standards specify that a container holding hazardous waste must always be closed except when adding or removing waste and also that the container must not be handled in a manner which may cause it to rupture or leak. As with 90-day accumulation, large quantity generators of F006 waste that comply with the applicable regulatory provisions may treat the waste in the accumulation unit without a RCRA permit during the 180-day (or 270-day, if applicable) accumulation period (see 51 FR 10168, March 24, 1986).

2. Measures to Ensure Wastes Are Not Accumulated for More Than 180 Days (or 270 Days)

Large quantity generators of F006 waste operating under the terms of today's rule must also comply with provisions which indicate that the length of time the wastes remain on-site in certain accumulation units must not exceed 180 days (or 270 days if applicable) from the date the waste is generated. For those accumulating F006 in containers, the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container. Those who choose to accumulate F006 in containment buildings must, among other things, develop a written description of the procedures to ensure that each waste volume remains in the unit for no more than 180 days (or 270 days, as applicable). Today's final rule does not impose documentation standards for generators of F006 waste in addition to those already required for large quantity generators accumulating F006 waste up to 90 days under the existing regulations (see 40 CFR 262.34(a)(2)).

EPA recognizes that there may be circumstances under which a generator may discover that he will not be able to recycle F006 waste that he has accumulated on-site for more than 90 days in anticipation of recycling. The

[5] Today's final rule will not affect any RCRA Subtitle C requirements for generators of F006 waste, other than the changes to 40 CFR 262.34 specified in this final rule.

generator may then be forced to send this material for disposal. In those instances EPA encourages self-disclosure of this violation to the appropriate regulatory agency under the terms of either the Policy on Compliance Incentives for Small Businesses (June 10, 1996) or Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (the ''audit policy,'' December 22, 1995). Many states have adopted similar policies for self-disclosed violations. The generator should be prepared to demonstrate that the F006 waste was accumulated for more than 90 days based on a good faith belief that he would be able to send it to a recycling facility.

3. Labeling and Marking Accumulation Units

Large quantity generators of F006 waste operating under the terms of today's rule are required to clearly label or mark each tank or container used to accumulate hazardous waste with the words ''Hazardous Waste.''

4. Preparedness and Prevention (40 CFR Part 265, Subpart C)

Under today's final rule, large quantity generators of F006 waste who accumulate F006 waste on-site under the terms of today's rule for up to 180 days (or 270 days, as applicable) must comply with subpart C of part 265 which contains standards for facility preparedness and prevention. These generator facilities must be maintained and operated in a manner that minimizes the possibility of fire, explosion, or any unplanned release of hazardous waste or hazardous waste constituents to the environment. The standards specify that generator facilities must generally be equipped with emergency devices, such as an internal communications or alarm system, a telephone or other device capable of summoning emergency assistance, and appropriate fire control equipment, unless none of the wastes handled at the generation site requires a particular kind of equipment. Equipment must be tested and maintained, as necessary, to assure its proper functioning. All persons involved in hazardous waste handling operations must have immediate access to either an internal or external alarm or communications equipment, unless such a device is not required.

Additionally, large quantity generators are also required to maintain sufficient aisle space to allow for the unobstructed movement of personnel and equipment to any area of the facility operations in an emergency, unless aisle space is not needed for any of these purposes. Large quantity generators also must attempt to make arrangements with police, fire departments, state emergency response teams, and hospitals, as appropriate, to familiarize these officials with the layout of the generator's site and the properties of each type of waste handled at the site in preparation for the potential need for the services of these organizations. If state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal.

5. Contingency Plan and Emergency Procedures (40 CFR Part 265, Subpart D)

Large quantity generators of F006 waste who accumulate that waste on-site for up to 180 days (or 270 days, as applicable) under the terms of today's final rule must comply with the contingency plan and emergency procedures provisions of 40 CFR part 265, subpart D. A large quantity generator's contingency plan must include, where necessary, a description of the generator's planned response to emergencies at the facility, any arrangements with local and state agencies to provide emergency response support, a list of the generator's emergency response coordinators, a list of the generator's emergency equipment, and an evacuation plan. Requirements for distributing and amending the contingency plan are specified. In addition, a facility emergency coordinator must be either present, or on call, whenever the facility is in operation.

Provisions for emergency procedures specified in subpart D of part 265 include immediate notification of employees and local, state, and Federal authorities of any imminent or actual emergencies; measures to preclude the spread of fires and explosions to other wastes; proper management of residues; rehabilitation of emergency equipment and notification of authorities before operations are resumed; and recordkeeping and reporting to EPA on the nature and consequences of any incident that requires implementing the contingency plan.

6. Personnel Training (40 CFR 265.16)

As finalized in today's rule, large quantity generators of F006 waste who accumulate that waste on-site for up to 180 days (or 270 days, as applicable) under the terms of today's rule are subject to the provisions for personnel training in 40 CFR 265.16. These requirements are designed to ensure that personnel are adequately prepared to manage hazardous waste and respond to any emergencies that are likely to arise. Personnel training can be in the form of on-the-job or classroom training, but must be performed by an instructor who is trained in hazardous waste management procedures. Personnel training must be performed within six months of initial employment and must be renewed annually. The generator's owner or operator also must maintain records in accordance with 40 CFR 265.16(d) to document completion of the training requirements for employees.

7. Waste Analysis and Record Keeping (40 CFR 268.7(a)(5))

Under today's final rule, large quantity generators of F006 wastes who accumulate F006 waste on-site for up to 180 days (or 270 days, as applicable) under the terms of today's rule and who treat their wastes in accumulation tanks, containers, or containment buildings located at the generator's site to meet the applicable land disposal treatment standards under 40 CFR part 268, subpart D, must prepare and follow a written waste analysis plan. The waste analysis plan must describe the procedures the generator will use to comply with the treatment standards for the waste. The waste analysis plan must be based upon a chemical and physical analysis of a representative sample of the generator's waste stream. Hazardous waste generators are required to submit a copy of their waste analysis plans for hazardous wastes treated in 180-day (or 270-day, as applicable) accumulation units to either the authorized state or EPA Regional office prior to conducting treatment. Generators also are required to retain a copy of the waste analysis plan in the generator's files.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. (See 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA maintains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized states have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a state with final authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state and EPA could not issue permits for any facility in the state that the state was

authorized to permit. When new, more stringent federal requirements were promulgated or enacted, authorized states had to enact equivalent authority within specified time frames, but new federal requirements did not take effect in an authorized state until the state adopted the requirements as state law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed under the HSWA take effect in authorized states at the same time that they take effect in non-authorized states. EPA is directed to implement HSWA requirements and prohibitions in an authorized state, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA-related provisions as state law to retain final authorization, HSWA applies in authorized states until the states revise their programs and receive authorization for the new provision.

B. Effect on State Authorization

Today's final rule will promulgate regulations that are not effective under HSWA in authorized states. This rule will, therefore, be applicable only in those states that do not have final authorization.

Authorized states are only required to modify their programs when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent than the federal programs, states are not required to modify their programs. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the federal program. Today's final rule for additional accumulation time for large quantity generators of F006 waste is considered less stringent than the existing federal regulations because it allows more than the existing 90 days of accumulation time that is in the existing regulations. Authorized states are not, therefore, required to modify their programs to adopt regulations consistent with, and equivalent to, today's final rule.

Even though states are not required to adopt the additional accumulation time for large quantity generators of F006 waste in this final rule, EPA strongly encourages states to do so as quickly as possible. As discussed above, this final rule is intended to encourage and facilitate recycling of F006 waste. In addition, states participated as stakeholders in the CSI process and presently participate in the NACEPT Committee on Sectors, and EPA is encouraging all states to participate in the metal finishing sector projects and Strategic Goals implementation programs. States are, therefore, urged to adopt today's final rule, and EPA is committed to making efforts to expedite review of authorized state program revision applications that incorporate this final rule.

VII. Effective Date

This final rule is effective immediately. Section 3010(b)(1) of RCRA allows EPA to promulgate an immediately effective rule where the Administrator finds that the regulated community does not need additional time to come into compliance with the rule. Similarly, the Administrative Procedures Act (APA) provides for an immediate effective date for rules that relieve a restriction (see 5 U.S.C. 553(d)(1)).

This rule does not impose any requirements on the regulated community; rather, the rule provides flexibility in the regulations with which the regulated community is required to comply. The Agency finds that the regulated community does not need six months to come into compliance.

VIII. Technical Correction

The Agency is correcting a reference to section 268 that appears in § 262.34(a)(4). § 262.34(a) identifies the conditions under which a generator may accumulate hazardous waste on-site for 90 days without a permit and refers to the Land Disposal Restriction Testing, Tracking and Recordkeeping Requirements for generators in § 268.7(a). The LDR Phase IV Rule, finalized on May 12, 1997 (62 FR 26091), changed the numbering of § 268.7(a) so that what used to be § 268.7(a)(4) became § 268.7(a)(5). However, the corresponding reference to this section in 262.34(a)(4) was not changed. Therefore the Agency is making this correction today. A similar correction in the accumulation time regulations for Small Quantity Generators (generators of over 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month) in § 262.34(d)(4) was finalized on May 11, 1999 (64 FR 25414). In the proposed rule, § 262.34(g)(v) included this same incorrect reference. In the final rule this has been changed to refer to § 268.7(a)(5) instead.

IX. Regulatory Analyses

A. Executive Order 12866: Determination of Significance

Under Executive Order 12866, (58 FR 51,735, October 4, 1993) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

The Agency estimated the costs of today's final rule to determine if it is a significant regulation as defined by the Executive Order. The analysis considered compliance costs and economic impacts for F006 wastes affected by this rule. EPA estimates the total cost of the rule to be a savings in the range of $4.2 million to $5.3 million annually, and concludes that this rule is not economically significant according to the definition in E.O. 12866. Moreover, the Agency believes that this rule is not significant because it does not create serious inconsistency with actions taken or planned by another agency, or materially alter budgetary impact or rights and obligations of recipients. The Office of Management and Budget, however, has deemed this rule to be significant for novel policy reasons and has reviewed this rule.

Detailed discussions of the methodology used for estimating the costs, the economic impacts, and the benefits attributable to today's proposed rule for on-site accumulation of F006 wastes, followed by a presentation of the cost, economic impact, and benefit results, may be found in the background document: ''Regulatory Impact Analysis of the Proposed Rule for a 180-Day Accumulation Time for F006 Wastewater Treatment Sludges,'' which is placed in the docket for today's final rule. A summary of this methodology and the results follows.

1. Methodology of Regulatory Impact Analysis

The Agency examined reported values for F006 waste generation from the 1995 Biennial Reporting Systems (BRS) database to estimate the volumes of F006 waste affected by today's rule, to

determine the national level incremental costs (for both the baseline and post-regulatory scenarios), economic impacts (including first-order measures such as the estimated percentage of compliance cost to industry or firm revenues), and benefits.

EPA evaluated two options in completing the economic analysis for this rule. The first option (hereafter Option 1) evaluated a maximum accumulation of 17.7 tons (16,000 kg) of material in a 180-day time period (or 270 days if the modeled shipment exceed 200 miles). The second option (hereafter Option 2) evaluated a maximum accumulation of 22 tons (20,000 kg) in a 180-day time period (or 270 days if the modeled shipment exceeded 200 miles). The second option was added based on information (presented by commenters and confirmed by the Agency) that a 20 to 22 ton load more accurately represented a full truck load.

2. Results

a. Volume Results

The BRS database reports that in 1995 there were 1,483 metal finishing firms potentially affected by today's rule. The data report that these firms generated 35,976 tons of F006 waste annually that are eligible to benefit from today's proposed rule. EPA is aware that this estimate on the number of firms that could benefit from today's proposal probably underestimates the total number of firms affected by today's rulemaking. Information available from other sources indicates that there are more than 11,000 metal finishing establishments in the United States. For example, one source estimates that there are 8,000 ''captive'' shops (where the metal finishing operation is contained inside a larger manufacturing operation) and 3,000 ''job shops'' or ''independent'' metal finishing operations (usually small businesses that operate on a contract basis). In contrast, the most recent BRS data only account for about three thousand of this total. Thus, it is likely that cost savings and benefits associated with this rulemaking are greater than estimated below.

b. Cost Results

For today's final rule, EPA has estimated a cost savings associated with a 180-day accumulation time (or 270 days where transport distance exceeds 200 miles) for large quantity generators of F006 waste. The total annual incremental savings is estimated to be between $3.9 million and $5.0 million for Option 1 and $4.2 million and $5.3 million for Option 2.[6] These savings may result from reducing the total number of shipments of F006 waste off-site for recycling. Savings also may result from a lower cost per ton of transportation because generators are able to accumulate more F006 waste for a shipment off-site and the cost per unit of F006 waste transportation (for the fixed cost portion of the transportation) is less for a full truck as compared to a partial truck load. In addition, literature reviewed in the development of this rulemaking indicates that recyclers sometimes assess a surcharge for small volumes of material due to increased handling and administrative costs.[7] It is possible that a 180-day (or 270-day, if applicable) accumulation time will allow some F006 waste generators to reduce this surcharge.

3. Economic Impact Results

To estimate potential economic impacts resulting from today's proposed rule, EPA has used first order economic impacts measures such as the estimated cost savings of today's proposed rule as a percentage of sales/revenues. EPA has applied this measure to affected F006 waste generators. For affected F006 waste generators, EPA has estimated the cost savings to be less than one percent of a typical metal finisher's sales or revenues. More detailed information on this estimate can be found in the regulatory impact analysis placed into today's docket.

a. Benefits Assessment

The Agency has performed a qualitative benefits assessment for today's final rule. EPA believes that a relatively small, but significant percentage of total F006 waste generated would be diverted from land disposal to off-site recycling. This shift from land disposal to recycling should result in a conservation of natural resources associated with primary mineral extraction, including reduced water and energy inputs as well as reduced solid waste outputs (*e.g.*, slag, tailings, and overburden). Other benefits expected from today's proposed rule include conservation of hazardous waste landfill capacity, reduced balance of payments for nonferrous mineral commodities, and conservation of strategic metals.[8]

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has fewer than 1000, 750, or 500 employees per firm depending upon the SIC code the firm is primarily classified in;[9] (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we have determined that this action will not have a significant economic impact on a substantial number of small entities.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the

[6] This range of estimated savings results from uncertainty surrounding a number of other factors that affect a generator's ability and interest in sending F006 to either recycling or landfilling. These factors include: (1) The metal value of sludge, (2) the proximity to the nearest landfill, (3) the presence of tramp constituents in the sludge, (4) real or perceived risk of Superfund liability, (5) the ability of several generators to accumulate a full truck load in less than 90 days, and other factors. For more information, see Section 2.3 of the Regulatory Impact Analysis for this final rule.

[7] George C. Cushnie Jr., National Center for Manufacturing Sciences & National Association of Metal Finishers, Pollution Prevention and Control Technology for Plating Operations (Ann Arbor, MI: National Center for Manufacturing Sciences, 1994), p.312.

[8] For more information on balance of trade for nonferrous minerals and conservation of strategic metals, see U.S. Environmental Protection Agency, Report to Congress on Metal Recovery, Environmental Regulation and Hazardous Wastes (Washington D.C., U.S.EPA, 1994), Chapter 7.

[9] F006 is generated by manufacturing firms across a number of SIC codes including 3471, Electroplating, Plating, Polishing, Anodizing and Coloring; 3672, Printed Circuit Boards and other manufacturing SICs. The Small Business Administration has classified firms in the manufacturing sector (SIC Codes 20–39) as small businesses within the sector based on the number of employees per firm. The classification system uses either 500, 750 or 1000 employees depending upon which SIC code. See Small Business Size Standards, 61 FR 3280, 3289 (January 31, 1996). Thus, to determine if a generator of F006 is a small business, the primary SIC code of the firm would have to be determined. Most independent electroplaters or ''job shops'' are in the 3471 SIC code which has a size standard of 500 employees. Captive platers (those plating operations within a larger manufacturing operation) will have size standards of either 500, 750 or 1000 employees.

impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Data indicate that virtually all independent electroplaters or job shops are small entities.[10] Captive shops contain both large and small entities. Data on captive plating operations is, however, more limited. The regulatory impact analysis completed for this final rule indicated that of 3,296 job shops, all but 2 are small entities. BRS data indicates that a total of 1,934 plating facilities, including both captive and independent operations, generate F006 waste and 1,483 of these firms are potentially affected by today's rule. Although the BRS data does not indicate what proportion of these affected generators are small entities, it is likely that the majority of these affected generators are small entities, because the plating firms most likely to be affected by this final rule generate the smallest quantities of F006 (which is related to both facility size and product output). This final rule would not have a significant economic impact on a substantial number of small entities because today's final rule would relieve regulatory burden for metal finishers and captive operations by allowing them up to 180 days (or 270 days under certain circumstances) instead of 90 days to accumulate F006 wastes on-site. The Agency estimates that this final rule would lead to an overall cost savings in the range of $4.2 to $5.3 million annually. The rule does not impose new burdens on small entities. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 2050–0035. An Information Collection Request (ICR) document was prepared by EPA (ICR Control Number 0820.07) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); Ariel Rios Building; 1200 Pennsylvania Avenue, NW; Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr.

EPA believes the changes in this final rule do not constitute a substantive or material modification to the information collection requirements. This final rule will not change any of the information collection requirements that are currently applicable to large quantity generators of F006 waste that accumulate the waste on-site. The recordkeeping and reporting requirements of this final rule are identical to the requirements already promulgated and covered under the existing Information Collection Request (ICR). There is no net increase in recordkeeping and reporting requirements. As a result, the reporting, notification, or recordkeeping (information) provisions of this rule will not need to be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The Agency estimates total projected burden hours associated with the information collection requirements of this final rule to be approximately 13.19 hours per year for each generator. This is the same burden associated with the information collection requirements for large quantity generators who currently accumulate waste on-site for less than 90 days under the existing regulations. These information collection requirements include: (1) Pre-transport informational requirements specific to large quantity generators (e.g., personnel training, contingency planning and emergency procedures, tank systems, containment buildings, and requests for extension of accumulation period); (2) air emission standards for process vents; (3) air emission standards for equipment leaks; and (4) recordkeeping and reporting. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory

[10] See U.S.E.P.A. Office of Solid Waste and Emergency Response, Regulatory Impact Analysis of 180-day Accumulation Time for F006 Wastewater Treatment Sludges, September 30, 1999, p. 13.

provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes and local governments would have no compliance costs under this rule. It is expected that states will adopt similar rules, and submit those rules for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The term ''policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule imposes no intergovernmental obligations on States. As discussed in Section VI (State Authority), today's rule is less stringent than the existing federal RCRA program; therefore, authorized states are not required to modify their programs to adopt regulations consistent with, and equivalent to, today's final rule. States that do not have a final authorized RCRA program also have no regulatory obligations as a result of today's rule because EPA will be responsible for implementing this rule in non-authorized states. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing this rule. The CSI metal finishing subcommittee included members representing state and local governments. Please refer to Section II.B. of this preamble for further information on the role of the CSI metal finishing subcommittee in developing this rule.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

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

This final rule does not create a mandate for tribal governments, nor does it impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that (1) is ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045, because this is not an economically significant regulatory action as defined by Executive Order 12866 and the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

Because this rulemaking retains current waste management standards for large quantity generators accumulating hazardous wastes on-site without a permit (40 CFR 262.34), EPA believes that the new 180-day (or 270-day, where applicable) accumulation period will not result in increased exposures to children. These provisions are discussed in detail in Section V.E. of this rule. EPA believes that these provisions are protective of human health and the environment and minimize the likelihood of exposure to hazardous waste held in these units.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rulemaking does not involve

technical standards. EPA has not, therefore, used any voluntary consensus standards.

I. Executive Order 12898: Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all populations in the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health or environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in safe and healthful environments. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's final rule covers F006 wastes from metal finishing operations. It is not certain whether the environmental problems addressed by this rule could disproportionately affect minority or low-income communities, due to the location of some metal finishing operations. Metal finishing operations are distributed throughout the country and many are located within highly populated areas. Because today's final rule retains provisions for large quantity generators of F006 waste to accumulate F006 waste in protective Subpart J tanks, Subpart I containers or Subpart DD container buildings, the Agency does not believe that today's rule will increase risks from F006 waste. These provisions are discussed in further detail in Section V.E. of this rule. It is, therefore, not expected to have any disproportionately high adverse human health or environmental effects on minority or low-income communities relative to affluent or non-minority communities.

J. Submission to Congress and General Accounting Office

The Congressional Review Act (5 U.S.C. 801(a)(1)(A)) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to the publication of this rule in this **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on March 8, 2000.

List of Subjects in 40 CFR Part 262

Environmental protection, Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Dated: March 1, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 262 as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Section 262.34 is amended by revising paragraph (a)(4) and adding new paragraphs (g), (h), and (i) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(a) * * *

(4) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR part 265, with § 265.16, and with 40 CFR 268.7(a)(5).

* * * * *

(g) A generator who generates 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

(1) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling;

(2) The F006 waste is legitimately recycled through metals recovery;

(3) No more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and

(4) The F006 waste is managed in accordance with the following:

(i) The F006 waste is placed:

(A) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265; and/or

(B) In tanks and the generator complies with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265, except §§ 265.197(c) and 265.200; and/or

(C) In containment buildings and the generator complies with subpart DD of 40 CFR part 265, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the following records at the facility:

(*1*) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

(*2) Documentation that the unit is emptied at least once every 180 days.*

(ii) In addition, such a generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for §§ 265.111 and 265.114.

(iii) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(iv) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, ''Hazardous Waste;'' and

(v) The generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with 40 CFR 265.16, and with 40 CFR 268.7(a)(5).

(h) A generator who generates 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the

requirements of paragraphs (g)(1) through (g)(4) of this section.

(i) A generator accumulating F006 in accordance with paragraphs (g) and (h) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264 and 265 and the permit requirements of 40 CFR part 270 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by EPA if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Regional Administrator on a case-by-case basis.

[FR Doc. 00–5503 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
March 8, 2000

Part V

Department of the Interior

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Eleventh Regular Meeting; Proposed U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat; Public Meeting; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Eleventh Regular Meeting; Proposed U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces the provisional agenda for the eleventh regular meeting of the Conference of the Parties (COP11) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The description of each proposed agenda item is followed by a brief explanation of the proposed U.S. negotiating position for that item. Proposals submitted by the United States are not covered in this notice. This notice contains only summaries of the proposed U.S. negotiating positions on agenda items, resolutions, and species proposals submitted by other countries and the CITES Secretariat for COP11. This notice also announces the time and place for a public meeting on these issues.

DATES: In developing the final U.S. negotiating positions on these issues, we will consider information and comments that you submit if we receive them by Friday, March 31, 2000. The public meeting will be held on March 13, 2000, from 1:30 to 4:00 pm.

ADDRESSES: *Comments:* You should send comments pertaining to proposed resolutions and agenda items to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203, or via E-mail at: r9oma__cites@fws.gov. You should send comments pertaining to species proposals to the Office of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, VA 22203, or via E-mail at: r9osa@fws.gov. Comments and materials that we receive will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Office of Management Authority or the Office of Scientific Authority.

Public Meeting: The public meeting will be held in rooms 7000A and B, Department of the Interior, 1849 C Street, NW, Washington, D.C. Directions to the building can be obtained by contacting the Office of Management Authority or the Office of Scientific Authority (see **FOR FURTHER INFORMATION CONTACT,** below). Please note that the room is accessible to the handicapped, and all persons planning to attend the meeting will be required to present photo identification when entering the building. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Office of Management Authority as soon as possible.

FOR FURTHER INFORMATION CONTACT: (1) For information pertaining to proposed resolutions and agenda items: Teiko Saito, Chief, U.S. Fish and Wildlife Service, Office of Management Authority, tel. 703–358–2095, fax 703–358–2298, E-mail at: r9oma__cites@fws.gov. (2) For information pertaining to species proposals: Dr. Susan Lieberman, Chief, U.S. Fish and Wildlife Service, Office of Scientific Authority, tel. 703–358–1708, fax 703–358–2276, E-mail at: r9osa@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, referred to below as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction. These species are listed in Appendices to CITES, copies of which are available from the Office of Management Authority or the Office of Scientific Authority at the above addresses, from our World Wide Website http://international.fws.gov, or from the official CITES Secretariat Website at http://www.cites.org/CITES/eng/index.shtml. Currently, 148 countries, including the United States, are Parties to CITES. CITES calls for biennial meetings of the Conference of the Parties, which review issues pertaining to CITES implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose and vote on amendments to Appendices I and II (species proposals), resolutions, decisions, discussion papers, and agenda items for consideration by the Conference of the Parties. Accredited nongovernmental organizations may participate in the meeting as approved observers, and may speak during sessions, but may not vote or submit proposals. The eleventh regular meeting of the Conference of the Parties (COP11) will be held in Gigiri, Kenya, April 10–20, 2000.

This is our sixth in a series of **Federal Register** notices that, together with announced public meetings, provide you with an opportunity to participate in the development of the United States' negotiating positions for the eleventh regular meeting of the Conference of the Parties to CITES (COP11). We published our first **Federal Register** notice on January 30, 1998 (63 FR 4613), and with it we requested information and recommendations on potential species amendments for the United States to consider submitting for discussion at COP11. You may obtain information on that **Federal Register** notice, and on species amendment proposals, from the Office of Scientific Authority at the above address. We published our second **Federal Register** notice on September 4, 1998 (63 FR 47316), and with it we requested information and recommendations on potential resolutions and agenda items for the United States to consider submitting for discussion at COP11. You may obtain information on that **Federal Register** notice, and on proposed resolutions and agenda items, from the Office of Management Authority at the above address. We published our third **Federal Register** notice on February 26, 1999 (64 FR 9523), and with it we announced the time and place of COP11, announced the times and places for the next meetings of the CITES Animals and Plants Committees, and announced a public meeting to discuss issues that were to be raised at those committee meetings. We published our fourth **Federal Register** notice on July 8, 1999 (64 FR 36893), and with it we listed potential proposed resolutions, agenda items, and proposed amendments to the CITES Appendices that the United States was considering submitting for consideration at COP11; invited your comments on these potential proposals; announced a public meeting to discuss the potential proposals; and provided information on how nongovernmental organizations based in the United States can attend COP11 as observers. You may obtain information on that **Federal Register** notice from the Office of Management Authority (for information pertaining to proposed resolutions and agenda items) or the Office of Scientific Authority (for information pertaining to proposed amendments to the Appendices) at the above addresses. We

also published a correction in the **Federal Register** on August 13, 1999 (64 FR 44234), correcting a paragraph regarding Atlantic swordfish on page 36909 of our July 8 **Federal Register** notice (64 FR 36893). We published our fifth **Federal Register** notice announcing resolution and agenda items and species proposals submitted by the United States to COP11 on February 17, 2000 (65 FR 8190). You may locate our regulations governing this public process in 50 CFR 23.31–23.39. Before COP11, we will announce any changes to the proposed negotiating positions contained in this notice and any undecided negotiating positions by posting a notice on our Internet website (http://international.fws.gov/global/cites.html). Pursuant to 50 CFR 23.38 (a), the Director has decided to suspend the procedure for publishing a notice of negotiating positions in the **Federal Register**, because time and resources needed to prepare a formal **Federal Register** notice would detract from essential preparation for COP11, and because the information on negotiating positions will otherwise be available on the internet. After the meeting of the COP, we will publish a notice in the **Federal Register** announcing the amendments to CITES Appendices I and II that were adopted by the Parties at the meeting, and requesting comments on whether the United States should enter reservations on any of these amendments.

We held public meetings on May 6, 1999 (to discuss issues before the CITES Animals and Plants Committees), and on July 28, 1999 (to discuss species proposals and resolutions and agenda items submitted by the United States to COP11). We will discuss U.S. positions on species amendments and resolutions submitted by other CITES Parties, and other agenda items leading up to COP11, at the public meeting on March 13, 2000.

Proposed Negotiating Positions

In this notice we summarize the proposed U.S. negotiating positions on agenda items and resolutions and proposals to amend the Appendices, which have been submitted by other countries and the CITES Secretariat. (Proposals submitted by the United States are covered in the **Federal Register** notice of February 17, 2000 [65 FR 8190]; see Background, above. We will not cover those issues in this notice. If time permits, they can be discussed at the public meeting on March 13, 2000). Numerals next to each agenda item or resolution correspond to the numbers used in the provisional agenda (Doc. 11.3), posted on the CITES Secretariat's Internet website (http://www.cites.org) and distributed through CITES Notification to the Parties No. 1999/96, issued on November 30, 1999. However, when we completed this notice, we still had not received documents for a number of the agenda items and resolutions from the Secretariat, nor have they been posted on the Secretariat's website. They will be available from the Office of Management Authority after they have been received from the Secretariat, or you may obtain them directly from the Secretariat's website when they are posted.

Some documents may not be received or posted until COP11 begins on April 10, 2000, or later during the Conference. A list of documents that we have received is available upon request from the Office of Management Authority (see **ADDRESSES,** above).

In the discussion that follows below, we have included a brief description of each proposed resolution, agenda item, or species proposal submitted by other countries or the CITES Secretariat, followed by a brief explanation of the proposed U.S. negotiating position for that item. Before COP11, we will announce any changes to the proposed negotiating positions contained in this notice and any undecided negotiating positions by posting a notice on our Internet website (http://international.fws.gov/global/cites.html). However, new information that may become available at COP11 could lead to modifications of these positions. The U.S. delegation will fully disclose any and all position changes and the explanations for those changes through daily public briefings at COP11.

Agenda (provisional) [Doc. 11.3]

Opening Ceremony and Welcoming Addresses

The Secretariat will prepare a document on these agenda items. According to tradition the host country conducts an opening ceremony and makes welcoming remarks at a meeting of the COP. Since COP11 is being hosted by the United Nations Environment Programme (UNEP), not the Government of Kenya, we understand that the opening ceremony and welcoming remarks will be conducted by UNEP.

Strategic and Administrative Matters

1. Rules of Procedure [Doc. 11.1]

The Secretariat, on behalf of the Standing Committee, distributes a provisional version of the Rules of Procedure, which describe the manner in which a COP is conducted, prior to all CITES COPs. The CITES Standing Committee may recommend modification to the Rules of Procedure for the work of the meeting of the COP. However, the COP discusses those proposed modifications, if any, and adopts Rules that guide the work of the Conference for the 2 weeks that it meets. Following COP 10, the Management Authority of Spain, with the cooperation of the CITES Secretariat, prepared a draft revision of portions of the Rules of Procedure. The United States prepared comments on this draft revision in preparation for the 42nd meeting of the Standing Committee, in Lisbon, September 28–October 1, 1999. At this meeting the Standing Committee reviewed the draft Rules of Procedure and made several significant proposed additions to the rules before agreeing that they should be forwarded to COP11 for adoption. One significant addition would provide the possibility for unofficial documents to be circulated at the COP and would give the Bureau the right to decide on appropriate action in the case of complaints from participants. Another significant proposed modification would establish a ''dispute resolution'' procedure, giving the Bureau authority to expel from the meeting any participant that ''vilifies'' a Party or brings the Convention into ''disrepute.'' The United States has noted previously our preference (U.S. response to Notification to the Parties 1998/18) that, on a species proposal or other issues before the Conference, the use of a secret ballot should be more restrictive than the current provision in Rule 25. However, in the interest of building consensus, we do not intend to propose any modifications to Rule 25.

The United States proposes to support most aspects of the provisional version of the Rules of Procedure as received from the Secretariat, with the following exceptions: Rule 12, paragraph 1, would allow a simple majority of the Parties present and voting to close from the public any session of the plenary or Committee I or II. This rule is in contrast to the rules that were in effect at COP 10, which allowed such action only ''in exceptional circumstances,'' and only with a two-thirds majority vote of Parties present and voting. The United States feels that transparency of the CITES process at a COP is of the utmost importance and would not support any effort to potentially reduce that transparency.

In Rule 29, the language in paragraph 3 allows significant interpretation in determining what ''abuses or vilifies a party, or brings the Convention into disrepute.'' Clear guidelines should be established for use in determining if a document is offensive, since this

determination could ultimately result in an organization being refused admission to the COP, or a formal complaint being made to a Party. In addition, the language in paragraph 4 that enables the Bureau to decide on appropriate action appears to be in conflict with Article XI paragraph 7 of the treaty that states that the Conference of the Parties is the body that can object to the participation of observers. The authority rests within the Plenary of the COP to decide if an individual observer should be no longer admitted to the meeting. One of the great strengths of CITES is its explicit provisions for observer participation.

2. Election of Chairman and Vice-Chairmen of the meeting and of Chairmen of Committees I and II and of the Budget Committee [no document]

The Secretariat will not prepare a document for this agenda item. The United States will support the election of a highly qualified Conference Chair, Vice-Chair of the Conference, and Committee Chairs representing the geographic diversity of CITES.

The Chair of the CITES Standing Committee (United Kingdom) will serve as temporary Chair of the meeting of the COP until a permanent Conference Chair is elected. According to tradition the host country provides the Conference Chair. Since there is no host country, the Standing Committee and UNEP will jointly recommend a suitable Chair to the Conference of the Parties. The Conference Chair will serve as Presiding Officer of the meeting of the COP and also of the Conference Bureau, the executive body that manages the business of the COP. Other members of the Conference Bureau include the Committee Chairs (discussed below), the members of the Standing Committee, and the Secretary General of CITES.

The major technical work of CITES is done in the two simultaneous Committees, thus, Committee Chairs must have great technical knowledge and skill. In addition, CITES benefits from active participation and leadership of representatives of every region of the world. The United States will support the election of Committee Chairs and a Vice-Chair of the Conference having the required technical knowledge and skills and also reflecting the geographic and cultural diversity of CITES Parties.

3. Adoption of the Agenda [Doc. 11.3]

The United States has reviewed the Provisional Agenda provided by the CITES Secretariat for COP11. The United States' discussion paper ''Recognition of the important contribution made by observers to the CITES process at meetings of the Conference of the Parties,'' which was submitted for consideration in Plenary session under agenda item #7 (Admission of Observers), has instead been assigned under a separate agenda item (#16), causing its consideration to be delayed by 2 days and limiting its initial audience to Committee II. The United States' discussion paper includes six recommendations which, if adopted by the Parties, would ensure the active participation of observers at future meetings of the Conference of the Parties. For many of the issues submitted for discussion at meetings of the COP, the greatest level of expertise lies within the community of nongovernmental organizations (NGOs) that attends meetings of the COP as observers. CITES recognizes this fact by explicitly providing for the active participation of observers at meetings of the COP in Article XI. Given the importance of observers, and in light of the difficulties they encountered while attempting to actively participate at COP10, the United States believes all policy documents concerning observers should be considered on the first working day of the meeting of the COP in Plenary. The United States recently wrote to the Secretariat to ask why that discussion paper was not scheduled for consideration under agenda item 7, as the United States had originally requested. If the United States does not receive a satisfactory response from the Secretariat and the matter remains unresolved, the United States may decide to oppose this aspect of the provisional agenda when it comes up for consideration at COP11.

4. Adoption of the Working Programme [Doc. 11.4]

The United States has received and continues to review the Provisional Working Programme for COP11 provided by the Secretariat. The United States generally supports the Provisional Working Programme, however, the United States is concerned that the discussion paper that the United States submitted on observers (see agenda item #3, above) has not been assigned as an earlier agenda item of the Provisional Agenda for COP11. In addition, the United States notes that on the afternoon of April 12th, Committee I is scheduled to consider agenda items regarding marine species, while Committee II is scheduled to consider interpretation and implementation of the Convention as it relates to the issuance of certificates of introduction from the sea. The United States is concerned that considering these issues simultaneously in different committees may present a scheduling conflict for many Parties, as their staff who cover marine species would probably also cover issues associated with certificates of introduction from the sea. The United States believes this scheduling conflict could be averted by changing the order in which Committee II considers its agenda items that afternoon, moving introduction from the sea to the final item for consideration.

5. Establishment of the Credentials Committee [no document]

A document will not be prepared by the CITES Secretariat on this agenda item. The United States will support the establishment of the Credentials Committee.

The establishment of the Credentials Committee is a standardized matter. The Credentials Committee approves the credentials of delegates to the meeting of the COP by confirming that they are official representatives of their governments, giving them the right to vote in Committee and Plenary sessions. The Credentials Committee consists of representatives from no more than five CITES Party governments nominated by the Standing Committee. The United States was a member of the Credentials Committee at COP10.

6. Report of the Credentials Committee [no pre-meeting document]

The Secretariat will not prepare a document on this agenda item prior to COP11, but one will be available at the Conference. The United States will support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries that are Parties to CITES. The United States will encourage timely production of Credentials Committee reports at the meeting of the COP.

Adoption of the report of the Credentials Committee is generally a standardized exercise. Representatives whose credentials are not in order should be given observer status as provided for under Article XI of the Convention. If evidence is provided that credentials are forthcoming but have been delayed, representatives can be allowed to vote on a provisional basis. A liberal interpretation of the Rules of Procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate. Exclusion of Party representatives whose credentials are not in order could undermine essential cooperation among Parties. However, greater vigilance is necessary in cases of close votes, or decisions to be made by secret ballot.

7. Admission of Observers [Doc. 11.7]

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. The United States supports admission to the meeting of all technically qualified nongovernmental organizations, and the United States opposes unreasonable limitations on their full participation as observers at COP11. Nongovernmental organizations (NGOs) are admitted as observers if their headquarters are located in a CITES Party country, and if the national government of that country approves their attendance at the meeting of the COP. International NGOs are admitted by approval of the CITES Secretariat. After being approved as an observer, an NGO is admitted to the meeting of the COP, unless one-third of the Parties present objects.

Nongovernmental organizations representing a broad range of viewpoints and perspectives play a vital and important role in CITES activities and have much to offer to the debates and negotiations at a meeting of the COP. Their participation is specifically provided by Article XI of the Convention. The United States supports the opportunity for all technically qualified observers to fully participate at meetings of the COP, as is standard CITES practice. The United States also supports flexibility and openness in approval of documents produced by nongovernmental organizations and the dissemination of these documents to delegates. This information sharing is vital to decision-making and scientific and technical understanding at a CITES meeting.

8. Matters Related to the Standing Committee

The Standing Committee directs the work of the Convention during the period between meetings of the COP. Its work includes: (1) providing general policy and operational direction to the CITES Secretariat concerning the budget and other matters; (2) providing coordination and advice to other CITES Committees and working groups; (3) drafting resolutions for the Parties to consider at meetings of the COP; and (4) carrying out activities on behalf of the Parties. The Standing Committee will meet on April 9, 2000, the day before COP11 begins, to nominate the chairs of COP committees and provide guidance needed to conduct the meeting of the COP.

1. Report of the Chairman [Doc. 11.8]

When we completed this notice, we still had not received a document for this agenda item from the Secretariat. The United States fully supports the presentation of a report by the Chairman of the Standing Committee (United Kingdom) regarding the execution of the Committee's responsibilities and its activities that accurately reflects the discussions and decisions of the Committee. The United States will develop a position on that report after receipt of the document.

2. Election of new regional and alternate regional members [no document]

The Parties are represented on the Standing Committee by region. Regions with many countries may have more than one representative, based on a formula approved by resolution at previous meetings of the COP. Of the six geographic regions, one has three representatives (Africa); three have two representatives (South/Central America and the Caribbean, Europe, and Asia); and two have one representative (North America and Oceania). Parties from each geographic region meet early during the meeting of the COP to select new regional representative(s) and alternates to the Standing, Animals, and Plants Committees, in addition to reviewing other issues.

The United States encourages membership that will continue the active role of the Standing Committee. The Regional Representative for North America from COP9 until now has been Mexico. Discussions have taken place among the three North American CITES Parties (Canada, Mexico, and the United States) on which country should be the regional representative between COP11 and COP12, and those discussions will continue and be finalized at COP11. Resolution Conf. 9.1 (Rev.) specifies that ''the terms of office of the regional members shall commence at the close of the regular meeting at which they are elected and shall expire at the close of the second regular meeting thereafter.''

9. Reports of the Secretariat

1. Annual report of the Secretariat [Doc. 11.9.1]

2. Staffing of the Secretariat [Doc. 11.9.2]

These two reports are essential to ensure that the Secretariat continues to perform its functions assigned under Article XII of CITES. However, when we completed this notice, we still had not received these documents from the Secretariat. When we receive these documents from the Secretariat, the United States will evaluate them and develop negotiating positions.

10. Financing and Budgeting of the Secretariat and of Meetings of the Conference of the Parties

The Secretariat submits its financial report and budget for approval at each meeting of the COP. The Parties may choose to modify the budget before approving it. Financial support for the Secretariat comes from a Trust Fund consisting of voluntary annual contributions from Party governments, based on a United Nations scale. Additional support for CITES activities is provided through extra contributions from governments and nongovernmental organizations, and is used for projects approved by the Standing Committee. This ''external funding'' is not part of the Secretariat's budget.

The United States is currently reviewing the budget documents of the Secretariat. The United States advocates fiscal responsibility and accountability on the part of the Secretariat and the Conference of the Parties. The United States plans to be an active participant in discussions in the Budget Committee at COP11.

1. Financial report for 1997, 1998 and 1999 [Doc. 11.10.1]

Issues associated with the financial report of the Secretariat will be fully discussed at COP11, and the United States will closely review and analyze the relevant documents.

2. Estimated expenditures for 2000 [Doc. 11.10.2]

Issues associated with anticipated 2000 expenditures of the Secretariat will be fully discussed at COP11. The United States will review the documents carefully, bearing in mind the need to balance tasks assigned to the Secretariat with available resources.

3. Budget for 2001–2002 and Medium-term Plan for 2001–2005 [Doc. 11.10.3]

The United States believes that coordinating Budget Committee discussions with discussions in Committees I and II that may have budgetary implications is important. The Budget Committee needs to have time to consider the financial and budgetary implications of resolutions approved by Committees I and II. Ideally, the Committees would not take decisions with budgetary implications until the budget is approved. The United States will continue to work through the Bureau at the meeting of the COP to deal with this issue. The United States believes that the Budget Committee should be in a stronger position to deal with these important issues if the meeting of the COP approves the new status of the Budget

Committee, reporting directly to the meeting of the COP as a full committee of the plenary.

4. External funding [Doc. 11.10.4]

External funding refers to the financial support by Parties and nongovernmental organizations for projects that have been approved as priorities for CITES by the Standing Committee. This procedure is designed to avoid any conflicts of interest or even the appearance of a conflict when approving projects and channeling funds between the provider and the recipient. These externally funded projects are outside the CITES Trust Fund.

The United States, through the Department of the Interior and the Department of State, continues to contribute external funding to Standing Committee-approved projects including delegate travel to the meeting of the COP, support for Committee meetings, CITES enforcement and implementation training, and biological studies of significantly traded species.

11. Committee Reports and Recommendations

1. Animals Committee

(a) Report of the Chairman [Doc. 11.11.1]

The current Chair (Mr. Robert Jenkins of Australia) will report on the activities of the Animals Committee since COP10. Since COP10, the Animals Committee held two meetings, the first (May 25–29, 1998) in Caracas, Venezuela, and the second (July 5–9, 1999) in Antananarivo, Madagascar. The Regional Representative from North America on the Animals Committee is Dr. Susan Lieberman of our Office of Scientific Authority, who has led the U.S. delegations to each of the Animals Committee meetings since COP10. The United States is an active participant in Animals Committee meetings, working groups, and activities. When we completed this notice, we still had not received a copy of the Chair's Report. You may obtain information regarding Animals Committee meetings from the Office of Scientific Authority at the address above (see **FOR FURTHER INFORMATION CONTACT**).

(b) Election of new regional and alternate regional members [no document]

The six CITES regions are represented on the Animals Committee by one or two persons, according to the number of countries in each region. This process was established in CITES Resolution Conf. 9.1 (Rev), which is available on the Secretariat's web page. The representatives are individuals, and not governments. Parties within each CITES region meet during the meeting of the COP to elect new Animals Committee members to represent them. The current North American regional representative on the Animals Committee is Dr. Susan Lieberman, Chief of our Office of Scientific Authority, on behalf of the United States. Dr. Lieberman also serves as Vice Chair of the Committee. The United States, Mexico, and Canada have discussed our representation for the interval between COP11 and COP12, and we will meet and finalize the region's selections for representative and alternate during the first week of COP11.

2. Plants Committee

(a) Report of the Chairman [Doc. 11.11.2]

The current Chair (Dr. Margarita Clemente of Spain) will report on the activities of the Plants Committee since COP10. Since COP10, the Plants Committee held two meetings: the eighth meeting of the Plants Committee (November 3–7, 1997) was in Pucon, Chile, and the ninth meeting (June 7–11, 1999), in Darwin, Australia. The United States sent a delegation to both of those Plants Committee meetings and has participated actively in Plants Committee activities. When we completed this notice, we still had not received a copy of the Chair's Report. You may obtain information regarding the Plants Committee from the Office of Scientific Authority at the address above (see **FOR FURTHER INFORMATION CONTACT**).

(b) Election of new regional and alternate regional members [no document]

The six CITES regions are represented on the Plants Committee by one or two persons, according to the number of countries in each region. This process was established in CITES Resolution Conf. 9.1 (Rev), which is available on the Secretariat's web page. The representatives are individuals, and not governments. Party countries within each CITES region meet during the meeting of the COP to elect new Plants Committee members to represent them. The current North American regional representative on the Plants Committee is Dr. Bertrand von Arx, on behalf of Canada. The United States, Mexico, and Canada have discussed our representation for the interval between COP11 and COP12 and will meet and finalize the region's selections for representative and alternate during the first week of COP11.

3. Identification Manual Committee [Doc. 11.11.3]

The Identification Manual Committee develops materials, such as manuals and data sheets, to help CITES Parties identify CITES-listed species. The current Chair is Dr. Ruth Landolt of Liechtenstein; the current Vice-chair is Dr. Chris Schurmann of the Netherlands. The report highlights those countries that have not yet submitted the required identification sheets under Resolution Conf. 9.1. The United States will attempt to fulfill this requirement after COP11. However, we are also actively involved in other identification efforts, and the publication of other more interactive or useful identification materials. We will continue to focus our identification efforts and limited resources on the production of materials most useful to our Wildlife Inspectors and Customs Inspectors and other enforcement personnel in the United States and abroad.

4. Nomenclature Committee

The Nomenclature Committee reviews nomenclature (scientific name) and taxonomic (scientific classification) issues that apply to species listed in the CITES Appendices. The Committee also prepares and adopts checklists for the various taxa (classifications) listed in the CITES Appendices.

(a) Report of the Chairmen [Doc. 11.11.4.1]

The Nomenclature Committee does not have regional representatives and meets only as needed, usually during the meetings of the Plants and Animals Committee. The United States participates in all activities of the Nomenclature Committee. The current Co-chairs are Dr. Marinus Hoogmoed (of the Scientific Authority of the Netherlands) for fauna (animals), and Dr. Noel McGough (of the Scientific Authority of the United Kingdom) for flora (plants). Drs. Hoogmoed and McGough have submitted their report for consideration at COP11 in this document. We note with praise the excellent work of Drs. Hoogmoed and McGough on all of these issues. For fauna, the report details several notable enquiries from the Parties on nomenclatural issues, along with recommendations for standard references for the following groups (taxa): crocodiles, turtles, tortoises, and tuataras; chamaeleons; Cordylid lizards; and fishes. For flora, the report summarizes existing checklists and a proposed work plan for the families Cactaceae, Orchidaceae, and Euphorbiaceae, various bulb genera, carnivorous plants, and the genera *Aloe* and *Pachypodium*.

(b) Recommendations of the Committee [Doc. 11.11.4.2]

This document contains recommendations of the Nomenclature Committee, as discussed in Doc. 11.11.4.1. We are still reviewing the budgetary requests and standard references (proposed in Doc. 11.39). We have not fully evaluated all of these taxonomic references. However, the United States tentatively proposes to support their adoption, pending input during this public comment process. We invite the review of these reports by experts in these taxa. The United States proposes to support all of the recommended annotations to and nomenclatural changes in the Appendices in the report (names used for wild populations of *Bos garus* and *Bos mutus,* names for genera of chameleons, names for species of *Tupinambis,* and *Brachypelma* nomenclature).

12. Evolution of the Convention

1. Action plan to improve the effectiveness of the Convention [Doc. 11.12.1]

Document SC.42.7, prepared by the Secretariat, is a report of actions taken to implement the Decisions in the Action Plan adopted by COP10. The report, which was presented and discussed at the 42nd meeting of the Standing Committee (SC42), held in late September 1999 in Portugal, addresses all the issues related to the ''Action Plan,'' including those directed to the Conference of the Parties, the Parties, the Animals and Plants Committees, UNEP, and the Secretariat.

At SC42, the Committee recommended that the Secretariat continue its work on refining the document, taking into consideration the comments made during the SC42. When we completed this notice, we still had not received the document for this agenda item from the Secretariat. When we receive the document from the Secretariat, the United States will evaluate it and develop a negotiating position.

Although when we completed this notice we still had not received the refined document from the Secretariat for this agenda item, the United States supports the activities and recommendations that were described in Document SC.42.7, and we anticipate that the United States will support its adoption by the Parties.

2. Strategic Plan for the Convention [Doc. 11.12.2]

At the 42nd meeting of the Standing Committee, the Draft Strategic Plan (SC42.5, Annex 1) was presented for discussion. The Draft Strategic Plan presents a long-range vision focused on broad goals and objectives to guide the Parties in achieving CITES' mission. The comments prepared by the Animals and Plants Committees (Annex 2 and 3, respectively) were also made available for review and comment. The Working Group revised the Draft Plan during SC42, taking into consideration the comments made by the Animals and Plants Committees, in addition to those from delegates and observers. Doc. SC.42.5 Annex 1 (Rev.) was presented and approved by the Standing Committee for circulation to the Parties. The Standing Committee also agreed that the Strategic Plan Working Group should continue its work on refining the document.

After the meeting, the Secretariat on behalf of the Standing Committee distributed to the Parties Doc. SC.42.5 Annex 1 (Rev.) in addition to a draft Action Plan to implement the goals and objectives identified in the Strategic Plan (Notification to the Parties No. 1999/76, issued on October 21, 1999). The Working Group met in early December to further refine the Strategic Plan as well as the Action Plan based on comments received from the Parties in response to the Notification. When we completed this notice, we still had not received the documents from the Secretariat for this agenda item. However, the United States as Chair of the Working Group, strongly supports the goals and objectives in the Strategic Plan and supplemental Action Plan and will work towards their adoption at COP11.

3. Co-operation and synergy with the Convention on Biological Diversity and other biodiversity-related conventions [Doc. 11.12.3]

At the 42nd meeting of the Standing Committee Doc. SC.42.17 (''Synergy Between the Biodiversity-related Conventions and Relations With Other Organizations'') was prepared by the Secretariat, discussed, and noted. When we completed this notice, we still had not received the document for this agenda item from the Secretariat. Once we receive it, we will develop a negotiating position.

4. Improvement of the effectiveness of the Convention: financing conservation of species of wild fauna and flora [Doc. 11.12.4]

The Government of France has submitted this draft Resolution on financing the conservation of wild species. However, when we completed this notice, we still had not received the official translation of this document from the Secretariat. Once we receive the official translation, the United States will develop a negotiating position.

13. Terms of Reference of Permanent Committees [Doc. 11.13]

At its 42nd meeting, the Standing Committee formally requested the Secretariat to review the terms of reference of existing inter-sessional Committees and to submit proposals to the Parties at COP11 regarding the structure, remit, and resources of each Committee, consistent with the goals and objectives of the CITES Strategic Plan, and allowing sufficient flexibility for the operation of each Committee. We expect Doc. 11.13 to cover this issue. Once we receive this document from the Secretariat, the United States will develop a negotiating position.

14. Synergy with the United Nations Food and Agricultural Organization [Doc. 11.14]

This document was sponsored by the United States, and our reason for submitting it is discussed in the **Federal Register** notice of February 17, 2000 [65 FR 8190]. The United States will work for adoption of the document and its recommendation by the Parties.

15. International Whaling Commission

1. Relationship with the International Whaling Commission [Doc. 11.15.1]

If adopted, this resolution would direct CITES to make decisions regarding international trade in whales and whale products under ''their own criteria set forth in Conf. 9.24, taking into account (i) scientific information from the IWC Scientific Committee and other sources and (ii) consistency with scientific requirements for the listing of other species in the Appendixes [sic].'' The United States notes that this is a requirement of the treaty and needs no reinforcement from a resolution. The United States also notes that the criteria include not only the biological status of candidate species, but also other elements, *e.g.,* the measures specified in paragraph 2 of Annex 4 of Resolution 9.24. Thus, according to Annex 4 of its own criteria, CITES should consider the IWC's progress on management measures in making decisions on Appendix listings.

The draft resolution also ''urges that the Parties apply the provisions for international trade in listed species as laid down in the Convention.'' This is also an obligation of all Parties to the Convention and, thus, this part of the resolution is also unnecessary.

Because the operative parts of this resolution call on the Parties to do things that are already requirements of the implementation of CITES, the United States opposes this resolution.

In addition, the United States has noticed an error in Doc. 11.15.1. The sixth preambulatory paragraph reads as follows:

Noting that a resolution, adopted at the 51st annual meeting of the IWC held in May 1999 in Grenada by 15 votes in favor, 10 votes against and 9 abstentions, objected for the time being the downlisting of any whales because the moratorium was still in effect;

Page 36 of the Chairman's Report of the 51st Annual Meeting (IWC, 1999) indicates that the resolution passed by a far wider margin, specifically stating, ''The resolution . . . was then adopted, with 21 votes in favour, 10 against and 3 abstentions.''

The United States has drawn the attention of the CITES Secretariat to this error and requested that corrected text be sent to the Parties.

The United States believes that CITES should honor the request for assistance in enforcing the moratorium on commercial whaling, which was communicated by the IWC to CITES in 1978. This request was answered by the CITES Parties in Resolution Conf. 2.9, which calls on the Parties to ''agree not to issue any import or export permit or certificate'' for introduction from the sea under CITES for primarily commercial purposes ''for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling.'' These complementary actions established a strong relationship between the two organizations, whereby CITES has agreed to reflect IWC decisions in its Appendices. The United States has proposed a resolution (Doc. 11.15.2) that encourages the continued cooperation between CITES and the IWC. The United States prefers this approach to the issue.

2. Reaffirmation of the synergy between CITES and the International Whaling Commission [Doc. 11.15.2]

This document was submitted by the United States, and our reason for submitting it is discussed in the **Federal Register** notice of February 17, 2000 [65 FR 8190]. The United States will work for adoption of the document.

16. Recognition of the important contribution made by observers to the CITES process at meetings of the Conference of the Parties [Doc. 11.16]

This document is a discussion paper submitted by the United States, and our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 [65 FR 8190]. The United States will work for adoption of the document and its recommendations by the Parties.

Interpretation and Implementation of the Convention

17. Consolidation of Valid Resolutions [Doc. 11.17]

This resolution includes the work of the Secretariat to consolidate existing Resolutions and Decisions of the Conference of the Parties on conservation of cetaceans, trade in cetacean specimens and relationship with the International Whaling Commission, enforcement and compliance; and non-commercial loan, donation or exchange of museum and herbarium specimens. This work was mandated by Decision 10.60.

Conservation of cetaceans—The United States notes that since the Standing Committee is obligated to do this consolidation, comments by some Parties that this consolidation effort should not be forwarded to the Conference of the Parties were ruled out of order. Two draft consolidated resolutions have been presented—a draft consolidated resolution that includes the original text and preamble of the resolutions, without textual changes, and a revised version of the draft consolidated resolution proposed by the Secretariat that takes the comments of some Parties into account. The choice is between the two resolutions. The United States is continuing to discuss this consolidation effort both internally and with other Parties in developing our proposed negotiating position.

We support the consolidation of various enforcement resolutions, and see no substantive changes or negative effects from the proposed consolidation of the enforcement resolutions.

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. We are continuing to review the sections (3 and 3b) on the consolidation of resolutions concerning non-commercial loan, donation, or exchange of museum and herbarium specimens. At the 42nd meeting of the Standing Committee we supported the consolidation of resolutions and still do, provided the new version is ''user friendly'' and does not ''impinge on the validity'' of existing resolutions.

18. Interpretation and Implementation of Article III, Paragraph 5, Article IV, Paragraphs 6 and 7 and Article XIV, Paragraphs 4, 5 and 6, Relating to Introduction From the Sea [Doc. 11.18]

Australia submitted a resolution to provide a practical basis for implementing CITES when listed species are taken on the high seas outside the jurisdiction of any country. The Convention refers to this as ''introduction from the sea,'' but is silent on how Parties should specifically implement trade controls in such situations. The Australian resolution clarifies the term ''introduction from the sea,'' recommends a number of measures to assist Parties in the monitoring of trade in listed marine species, and suggests appropriate standards for documenting specimens that enter trade from areas not controlled by any country. The resolution addresses provisions of Article XIV concerning the relationship between the Convention and other related international agreements that entered into force before CITES went into effect and requests that Parties submit information in their annual reports about specimens introduced from the sea under Article XIV. The resolution incorporates the current provisions of Resolution Conf. 10.2 on permits and certificates and Resolution Conf. 9.7 on transit and transhipment. The resolution directs the Secretariat to develop an appropriate mechanism to accurately record transactions involving specimens that are introduced from the sea and requests that the Secretariat, working with the Animals Committee and relevant intergovernmental fisheries organizations, monitor implementation of the measures of the resolution. To ensure effective international cooperation and achieve effective implementation of the resolution, the Secretariat is directed to communicate the provisions of the resolution to the Food and Agriculture Organization, other intergovernmental organizations, and the Secretariat of the U.N. Convention on the Law of the Sea.

The United States strongly supports the adoption of a resolution that provides a standard interpretation of introduction from the sea, as well as develops basic measures for implementation (see our **Federal Register** notice of February 17, 2000 [65 FR 8190]). This draft resolution submitted by Australia lays a solid framework for the Parties to discuss and consider the issue. However, a number of technical issues remain unanswered in this document. These issues include, among others, prior granting of a certificate before landing, information required on an introduction-from-the-sea certificate, how to anticipate type and quantity of catch to make a non-detriment finding and issue a certificate in advance of specimen collection, clarification of procedures for transit, and the issuance of certificates for shipments that are split and/or transferred to vessels that did not harvest the specimens. The United

States intends to support this resolution as a way to define and frame the issue of introduction from the sea, while recognizing that developing a mechanism to address the remaining technical implementation issues is critical. The United States would support broadening operative paragraphs of the draft resolution to ensure these issues are adequately addressed.

19. Report on National Reports Required Under Article VIII, Paragraph 7(a), of the Convention [Doc. 11.19]

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. The United States supports efforts to encourage all Parties to submit annual reports, for all species of fauna and flora, consistent with their domestic legislation. Each Party is required by CITES to submit an annual report containing a summary of the permits it has granted and the types and numbers of specimens of species in the CITES Appendices that it has imported and exported. Accurate annual report data are essential to measure the impact of international trade on CITES-listed species, and it can also be an effective enforcement tool, particularly when imports into a given country are compared to export quotas from other countries. The United States intends to meet our obligation to submit our annual report by the opening of COP11.

20. Enforcement

1. Review of alleged infractions and other problems of implementation of the Convention [Doc. 11.20.1]

Article XIII of CITES provides for a review of alleged infractions by the Conference of the Parties. The Secretariat prepares an Infractions Report for each meeting of the COP, which details instances in which the Convention is not being effectively implemented, or where trade is adversely affecting a species. The United States proposes to support the Secretariat's biennial review of alleged infractions by the Parties and any necessary or appropriate recommendations to obtain wider compliance with the terms of the Convention. When we completed this notice, we still had not received a copy of the infractions report from the Secretariat, but the United States will closely review it when received, and provide comments to the Secretariat if necessary.

2. Implementation of Resolutions [Doc. 11.20.2]

At COP10 Decision 10.120 was adopted which directed the Secretariat to prepare a list of Resolutions in effect so that Parties could assess their level of implementation and determine where they faced difficulties implementing them. The Secretariat prepared a list which was distributed with Notification to the Parties No. 987, and requested information on implementation of resolutions. The Secretariat received limited responses to their request and therefore cannot complete the directed analysis for the COP. The Secretariat is proposing in this document to continue the analysis of resolutions and their implementation difficulties, and present this analysis to the Standing Committee in 2001. We support the analysis by the Secretariat of resolution implementation and recognizing the difficulties encountered with specific resolutions, will support the proposed change in this document.

21. National Laws for Implementation of the Convention

1. National legislation project [Doc. 11.21.1]

The Secretariat prepared this document which provides a report on the progress of the National Legislation Project, which was initiated pursuant to Resolution Conf. 8.4. This document also outlines a legal capacity-building strategy proposed by the Secretariat to assist the Parties in the development of national legislation for the implementation of CITES. This strategy, including the possibility to recommend suspensions of trade, was endorsed by the Standing Committee at its 42nd meeting. Building the capacity for Parties to create solid national laws with full implementation and enforcement provisions is critical. The U.S. supports efforts to assist Parties in the development of adequate measures to implement the Convention, while continuing efforts begun at COP8 (with strong U.S. support) to ensure that all Parties adequately implement Article VIII of the CITES treaty, regarding adoption of implementing legislation with adequate enforcement provisions. The U.S. prefers that priority be given to the Secretariat's efforts to complete its legislative review of the remaining Parties for which this has not been done, and conduct a review of the national legislation of any new Parties that accede to the Convention. Our hope is that the excellent work that has gone into this project will continue to provide encouragement to those Parties without adequate legislation to fulfill their obligations under Article VIII. In implementing the strategy the U.S. supports the Secretariat's intent to conduct activities within existing funding levels and as donor funds become available. We believe that priority should be given to those Parties identified as having inadequate measures to implement the Convention and which also have a high volume of trade. The U.S. believes that the Secretariat should also prioritize efforts to develop model provisions that can be incorporated into national laws.

2. Measures to be taken with regard to Parties without adequate legislation [Doc. 11.21.2]

The Secretariat prepared this document which provides an update on the seven Parties that have been engaged in significant trade and whose legislation at COP10 failed to meet the requirements for implementing CITES. It also provides a draft decision on measures that could be taken in relation to four Parties engaged in high volumes of trade whose legislation was analyzed and determined to be inadequate. The proposed decision lays out the need for the affected Parties to adopt adequate legislation by October 2001. It also proposes that other Parties with inadequate legislation whose trade volume is not high adopt adequate legislation before COP12. We support the review of national laws and strongly believe that CITES' effectiveness is undermined when Parties do not have adequate national laws in place for implementing the Convention. We also fully support the recommendation of taking necessary measures when Parties continue to fail to adopt adequate legislation to implement CITES.

22. Reporting of Seizures [Doc. 11.22]

Israel has proposed this resolution, which recommends that Parties provide, in a timely manner, detailed information on any interceptions or seizures to the country of origin/export and the enforcement unit of the Secretariat, as well as detailed information on arrests and prosecutions. The United States strongly supports the concept of communication with other Parties on seizures, arrests, and prosecutions. The United States routinely provides seizure information as part of its annual report to the CITES Secretariat and information to originating or exporting countries on a case-by-case basis. However, the United States does not believe that Parties have the resources to communicate details on each seizure, arrest, or prosecution. Instead, the United States would propose to encourage Parties to communicate details as soon as possible for all Appendix I species and major

commercial seizures of any CITES species, as well as any related arrests or prosecutions.

23. Persistent Offenders [Doc. 11.23]

This resolution, submitted by Israel, recommends that the CITES Secretariat compile a master list of persistent offenders and circulate the list to each Party, and that national Management Authorities decline to honor any CITES permit listing one or more of these persistent offenders. While the United States recognizes that the issuance of CITES permits to persons or businesses that continually violate the Convention undermines both conservation and enforcement efforts, by our laws, the United States would be unable to provide such a list of persistent offenders, or prevent the importation of any shipments with authentic and valid permits. Alternatively, the U.S. would urge Parties to seek other national solutions to remedy this problem. In the U.S. an applicant may be denied U.S. permits if convicted, or if they have pleaded guilty, for a felony violation of several domestic laws, including the Lacey Act Amendments of 1981.

24. Use of Annotations in the Appendices [Doc. 11.24]

Annotations are ''footnotes'' in the CITES Appendices that are being used by the CITES Parties for a number of purposes. In recent years, they are increasingly used when species or geographically distinct populations of species are transferred from Appendix I to II with an annotation; the annotation specifies that certain parts, products, or specimens are allowed to be traded under the provisions of Appendix II, while other parts and products are still treated as Appendix I species. Such downlistings can serve a conservation purpose, but the United States is quite concerned that no criteria or guidelines are in place for the Parties on how to use, adopt, or amend these annotations. At COP10, the Parties adopted Decision 10.70, which directed the Standing Committee to consider ''ways and means of clarifying legal and implementation issues related to the use of annotations in the appendices'' and present a report to COP11. To explore this issue and develop a draft resolution for submission to COP11, the Standing Committee established a working group in which the United States participated, along with Switzerland (Chair), Argentina, Canada, Germany, and Namibia. The Standing Committee endorsed the consensus report of that working group, and agreed to submit it to COP11. The United States notes that several proposals submitted by countries for consideration at COP11 involve such annotations, making such a clarifying resolution that much more necessary. The United States proposes to support the document submitted by the Standing Committee.

25. Procedure for the Review of Criteria for Amendment of Appendices I and II [Doc. 11.25]

The criteria for amending the CITES Appendices were adopted at COP9 in 1994, in Resolution Conf. 9.24, titled ''Criteria for Amendment of Appendices I and II.'' That resolution recommends the following: ''that the text and the annexes of this Resolution be fully reviewed before the twelfth meeting of the Conference of the Parties with regard to the scientific validity of the criteria, definitions, notes, and guidelines and their applicability to different groups of organisms.'' The Standing Committee, with input from the Animals and Plants Committees, and assistance of the Secretariat, has developed a proposed procedure for the Parties to use to fulfill this recommendation. When we completed this notice, we still had not received the final document. The United States supported the procedure developed in consultation with the Animals, Plants, and Standing Committees, and we expect that the United States will support this procedure. The United States looks forward to input from international organizations with management competence for certain organisms, such as marine fish and tropical trees, but the United States considers it of the highest importance that any revision of the CITES listing criteria remain a CITES-driven process.

26. Definition of the Term ''appropriate and acceptable destinations'' [Doc. 11.26]

This draft resolution was submitted by Kenya and addresses concerns that have resulted from annotations applied to the downlisting of the southern white rhinoceros in South Africa and African elephant populations in Botswana, Namibia, and Zimbabwe to Appendix II. Under these annotations, international trade in live animals was allowed to ''appropriate and acceptable destinations.'' However, the annotations included no guidelines on how to determine if a destination was ''appropriate and acceptable'' and gave no indication of whether the exporting or importing country was responsible for making such a determination, or if the animals could be subsequently reexported. This draft resolution provides a definition of ''appropriate and acceptable destinations'' as those where the animals will be humanely treated, free to exhibit normal behavior, and able to contribute to the conservation of their species in the wild, with priority being given to other range states. Only export would be allowed, not reexport, and the Management Authority of the exporting country would be responsible for determining that the terms of the annotation had been met. The draft resolution also includes guidelines to assist the Management Authority of the exporting country in making that determination.

The United States agrees that the wording of these annotations is unclear and believes an effort toward clarifying when a destination is ''appropriate and acceptable'' is needed. While generally supportive, the United States is concerned about some aspects of the draft resolution and continues to evaluate it.

27. Recognition of Risks and Benefits of Trade in Wildlife [Doc. 11.27]

This document is a draft resolution prepared by Kenya. The United States supports the idea that, when effectively managed, international trade in wildlife specimens may provide important benefits to local communities and may serve an important management need. The United States also agrees that achieving sustainable levels of trade can be difficult and that illegal trade may pose a serious threat to a species' survival. The United States agrees that these are important considerations but is undecided on whether to support this resolution as drafted.

28. Quotas for Species in Appendix I

1. Leopard [Doc. 11.28.1]

This document, prepared by the Secretariat, reports on the use of export quotas for *Panthera pardus* (leopard), under the provisions of Resolution Conf. 10.14. The document discusses the requirement in the resolution that the Secretariat recommend to the Parties to suspend imports of leopard hunting trophies from any country with an export quota that has not met the reporting requirements of the resolution. The Secretariat believes that the reporting requirements of the resolution should be changed, however. The United States is still considering this issue.

2. Markhor [Doc. 11.28.2]

When we completed this notice, we still had not received this document, which is to be prepared by the Secretariat, on the implementation of Resolution Conf. 10.15, ''Establishment of Quotas for Markhor Hunting

Trophies,'' which deals with trophy export quotas for *Capra falconeri* (markhor) from Pakistan. The resolution requires a report from the Secretariat on implementation of this resolution by Pakistan, including the submission of a report. The United States will evaluate the document when it is received and develop a negotiating position.

29. Trade in Bear Specimens [Doc. 11.29]

This report was prepared by the Secretariat in response to Decision 10.65 which required a report on progress made in controlling illegal trade in bear parts and derivatives (Resolution Conf. 10.8). Decision 10.44 requested that Parties and non-Parties document and quantify domestic demand for bear parts and derivatives. The information in these reports, from CITES annual reports and other reports provided by law enforcement agencies, provided the basis for the Secretariat's report. Doc. 11.29 outlines findings on consumer demand, legislation, enforcement factors, education and reduction of demand, and conservation. The Secretariat believes that the guidance and recommendations of Resolution Conf. 10.8 remain valid and relevant. However, it does not believe that illegal trade in bear parts and derivatives will have been significantly reduced by COP11. The Secretariat suggests that range and consumer countries still need to follow the recommendations of the resolution and that the subject of conservation of and trade in bears should continue to be discussed by the Parties. The Secretariat recommends that a report be required for COP12 and that Decision 10.44 be repealed and a new decision be agreed upon at COP11.

The United States proposes to support the Secretariat's report and recommendations in Doc. 11.29.

30. Conservation of and Trade in Tigers

1. Implementation of Resolution Conf. 9.13 (Rev.) [Doc. 11.30.1]
2. Implementation of Decision 10.66 [Doc. 11.30.2]

When we completed this notice, we still had not received either of these documents from the Secretariat for these agenda items. When we receive these documents from the Secretariat, the United States will evaluate them and develop negotiating positions.

In January 1999, we hosted the CITES Tiger Missions Technical Team in Los Angeles, California, as part of its investigations of tiger range and consumer states. This visit provided us as well as other relevant Federal agencies, an opportunity to meet with the members of the technical team and outline law enforcement and public outreach efforts with regard to tiger conservation in the United States. The team prepared a report of its mission, which was presented at the 42nd meeting of the Standing Committee. The United States looks forward to participating in the next step of developing an action plan for improving the control of trade in specimens of tiger and related activities.

In October 1998, Congress passed the Rhinoceros and Tiger Conservation Act of 1998. This Act amended the 1994 Act of the same name by inserting the following: ''To prohibit the sale, importation, and exportation of products intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger.'' The Act also directs the U.S. Fish and Wildlife Service to develop and implement an educational outreach program in the United States for the conservation of rhinoceros and tiger species. We are currently developing a draft interim educational outreach plan and, in the near future, will present it to the public for comment in a **Federal Register** notice. In the notice announcing our draft plan, we will also be seeking partnerships in carrying out the activities of the final plan, once it is developed. The Service also continues to be active in providing funding for tiger conservation worldwide through the Rhinoceros and Tiger Conservation Fund.

31. Conservation of and Trade in Elephants

1. Experimental trade in raw ivory of populations in Appendix II [Doc. 11.31.1]

When we completed this notice, we still had not received the document for this agenda item from the Secretariat. When we receive the document from the Secretariat, the United States will evaluate it and develop a negotiating position.

2. Monitoring of illegal trade and illegal killing [Doc. 11.31.2]

When we completed this notice, we still had not received the document for this agenda item from the Secretariat. When we receive the document from the Secretariat, the United States will evaluate it and develop a negotiating position.

3. Revision of Resolution Conf. 10.10 [Doc. 11.31.3]

The document for consideration was submitted by Kenya and India. The document emphasizes a need to revise Resolution Conf. 10.10 due to apparent inconsistencies in the requirements of Resolution Conf 10.10 as they related to Decision 10.1.

The United States is undecided on whether it will support the proposed resolution from Kenya and India. The United States is continuing to evaluate this issue, and develop a policy position on this proposed resolution.

4. Non-commercial disposal of ivory stockpiles [Doc. 11.31.4]

The document was submitted by Kenya. The document emphasizes the need to revise the process for the noncommercial disposal of ivory stockpiles that was established under the terms of Decision 10.2. We are undecided on whether the United States will support this proposed resolution, and we will continue to consider it and gather relevant information in order to develop a negotiating position.

32. Conservation of and Trade in Rhinoceroses [Doc. 11.32]

The Secretariat prepared this document. The United States agrees with the decision taken at the 42nd meeting of the Standing Committee not to fund the work outlined in the report on the workshop to develop standardized indicators to measure the success of rhinoceros conservation measures in the context of CITES Resolution Conf. 9.14. The United States, however, strongly supports Resolution Conf. 9.14. Furthermore, the United States continues to support efforts in both range states and consumer states to control the illegal trade in rhinoceros horn.

From 1996 through 1999, the U.S. Fish and Wildlife Service, through the Rhinoceros and Tiger Conservation Fund, awarded 80 grants (totaling US$1,437,000) in 12 countries for rhino and tiger conservation. Through this fund, we will continue to support critical international conservation efforts in nations whose activities directly affect rhinoceros and tiger populations. With regard to the Secretariat's recommendation in Doc. 11.32, the United States does not feel that it would be appropriate to repeal Resolution Conf. 9.14. However, the United States believes that revising this resolution along the lines of the revisions made to Resolution Conf. 9.13, with regard to the conservation of and trade in tigers at COP10, would be appropriate.

33. Exports of Vicuña Wool and Cloth [Doc. 11.33]

At COP6, certain populations of the vicuna (*Vicugna vicugna*) in Chile and Peru were transferred from Appendix I

to II. The remaining Peruvian populations were transferred to Appendix II at COP9, with an annotation allowing export only of cloth products, wool sheared from live animals, and the Peruvian stockpile of 3,249 kilograms of wool remaining in November 1994. At COP10, certain vicuna populations of Argentina and Bolivia were also transferred from Appendix I to II with an annotation for specially marked products.

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. When we receive this document from the Secretariat, the United States will evaluate it and develop a negotiating position. At COP10, the United States supported the transfer of certain vicuna populations to Appendix.

34. Conservation of and Control of Trade in Tibetan Antelope [Doc. 11.34]

The People's Republic of China submitted this document as part of their ongoing efforts to promote international cooperation to conserve the Appendix I-listed Tibetan antelope (*Pantholops hodgsonii*). Wild populations of Tibetan antelope on the Tibetan Plateau have been subjected to heavy poaching for their wool, called shahtoosh, which is smuggled to India, woven into high-fashion shawls in the State of Jammu and Kashmir, and illegally exported around the world. An International Workshop on the Conservation and Control of Trade in Tibetan Antelope was held in Xining, China, in October 1999. Participants of the International Workshop, including two representatives of the Fish and Wildlife Service, adopted a consensus declaration, the ''Xining Declaration,'' which, among other things, calls for COP11 to adopt a resolution urging all Parties to strengthen law enforcement to control trade in parts and derivatives of Tibetan antelope, especially shahtoosh. An early draft of this resolution was presented to participants of the International Workshop for comment. The draft more or less reflects the content of the ''Xining Declaration'' and, if adopted and implemented, would contribute positively to conservation of wild populations of the Tibetan antelope. The United States intends to support an appropriately edited version of this Resolution at COP11.

35. Trade in Freshwater Turtles and Tortoises to and in Southeast Asia [Doc. 11.35]

This document is a discussion paper that was cosponsored by Germany and the United States, and our reason for submitting it is discussed in the **Federal Register** notice of February 17, 2000 [65 FR 8190]. The United States will work for adoption of the document and its recommendations by the Parties.

36. Trade in Seahorses and Other Members of the Family Syngnathidae [Doc. 11.36]

This document is a discussion paper and was cosponsored by Australia and the United States. Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 [65 FR 8190]. The United States will work for adoption of the document and its recommendations by the Parties.

37. Identification and Reporting Requirements for Trade in Specimens of Hard Coral [Doc. 11.37]

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. At COP10 the United States submitted a resolution on coral identification and reporting at the request of the Animals Committee. The proposed resolution was not adopted by the Parties. The issue remained a concern of the Animals Committee and a working group, which included the United States, was formed to develop solutions to the problem of recording coral sand, gravel, and live rock in international trade, as well as the identification of these commodities. The United States strongly supports efforts to simplify the coral identification and reporting process, however, the United States is concerned that some of the proposed solutions in this resolution merely eliminate CITES controls on certain commodities. The United States is firmly engaged in the issue of coral reef conservation, including the role of trade, and proposes to support only those efforts that do not weaken CITES controls for coral.

38. Timber Species

1. Report from the Secretariat [Doc. 11.38.1]

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. At COP10 the Parties adopted several Decisions on timber species. Decision 10.130 requires the Secretariat to investigate the reasons for non-reporting by Parties on CITES timber trade, particularly by importing countries, to investigate the extent to which Parties have informed the timber traders in their countries of CITES procedures, and to report back on these issues at COP11. The United States supports this process. The United States reports U.S. trade in CITES timber species in our CITES annual reports, and we have worked with the U.S. Department of Agriculture (USDA) over the last several years to inform timber traders and producers in the United States and abroad of CITES procedures and requirements. For example, at the 9th meeting of the Plants Committee in June 1999, the USDA's Forest Service presented a draft brochure that it prepared with the help of the Service, the U.S. Department of State, and the International Wood Products Association, aimed at providing timber traders and producers worldwide with a better understanding of CITES.

Under Decision 10.134, the Secretariat will also report at COP11 on the implementation of the special procedures regarding time validity and change of destination for permits issued for timber species and provide recommendations on whether or not these special procedures should be maintained. We have reviewed our annual report records on U.S. timber species trade since COP10, and we have determined that no CITES documents with a change in destination or a change in the time validity were presented for clearance at U.S. ports of import during this time period. If the Secretariat's report shows that the other Parties also have not cleared any CITES timber documents showing a change in destination or a change in the time validity, then the United States would support not maintaining these special procedures for timber species.

2. Progress in the conservation of *Swietenia macrophylla* (bigleaf mahogany) [Doc. 11.38.2]

Brazil has proposed including bigleaf mahogany as an agenda item for discussion. This inclusion will provide the Parties an opportunity to discuss progress in the conservation of *Swietenia macrophylla* since COP10. At COP10, during discussions in Plenary, Brazil offered to host a Mahogany Working Group meeting that would examine the conservation status of the species, including related forest policies and management and international cooperation and trade, and make recommendations accordingly. Brazil submitted Doc. 11.38.2, a summary report of the meeting of the Mahogany Working Group, hosted in Brasilia, Brazil, in June 1998. We will work closely with other Federal agencies and intend to develop for submission an informational document outlining the United States' views on the issue, actions under way to conserve the species, and some useful recommendations. The United States appreciates Brazil's efforts and looks forward to increased efforts to foster the

conservation of this species, both generally and in the CITES context specifically.

39. Standard Nomenclature [Doc. 11.39]

This document was prepared by the Secretariat based on the reports of the co-Chairs of the Nomenclature Committee (Documents 11.11.4.1 and 11.11.4.2). The document is a draft resolution on standard nomenclature. The draft resolution adopts additional standard references for crocodiles, turtles, tortoises, tuataras, snakes, chameleons, lizards in the family Cordylidae, *Tupinambis* species, fish, and plants in the genera *Aloe* and *Pachypodium.* We have not fully evaluated all of these taxonomic references. However, the United States tentatively proposes to support their adoption, pending input during this public comment process. We invite the review of these references by experts in these taxa.

40. Assistance to Scientific Authorities for Making Non-detriment Findings [Doc. 11.40]

The CITES treaty requires scientific non-detriment findings for all exports and introductions from the sea for CITES-listed species, and for all imports of Appendix I species. It is vital for species conservation that scientifically based non-detriment findings are provided prior to issuance of permits, and that these findings are based on biologically sound information. The Parties have recognized, and the United States agrees, that the conservation of species subject to international trade would benefit greatly from increased attention to the issuance of non-detriment findings. Towards that end, we worked closely with the IUCN—the World Conservation Union, which convened two international workshops to ''Develop Guidance on the Making of Non-Detriment Findings,'' held in Hong Kong in October 1998 and the United Kingdom in October 1999. The United States provided funding for the workshops through the U.S. Department of State annual funding to IUCN. Our Office of Scientific Authority was an invited participant at both workshops, as a representative on the Animals Committee, as were several representatives from the Animals and Plants Committees and Scientific Authorities from several countries. This was the first-ever opportunity to develop an international consensus on the CITES scientific decision-making process. The workshops were very productive and produced several useful documents, including a report, checklist for the Parties, and material to be used in training. When we completed this notice, we still had not officially received the document on this agenda item, but we have seen and commented on the drafts, and we anticipate that the United States will fully support it.

41. Significant Trade in Appendix-II Species

1. Implementation of Resolution Conf. 8.9 [Doc. 11.41.1]

This issue pertains to the implementation of Resolution Conf. 8.9, ''The Trade in Wild-caught Animal Specimens.'' This ongoing process is carried out by the Animals Committee, whereby trade in selected Appendix II, wild-caught animal species subject to high levels of international trade is reviewed for sustainability. Based on analyses of biology and trade, the Animals Committee consults with range countries and makes recommendations such as trade quotas, request for non-detriment findings, or field studies. Affected Parties must report their progress in satisfying the recommendations to the Secretariat. Unsatisfactory compliance may result in a recommendation from the Secretariat to the Standing Committee for implementing strict measures such as trade suspensions. The essence of this resolution and this process is implementation of CITES Article IV, specifically dealing with the required non-detriment findings. This process has been an extremely successful, resulting in benefits for species conservation. When we completed this notice, we still had not received this document, which we surmise will be a report of the Secretariat on implementation of this resolution since COP10.

2. Revision of Resolution Conf. 8.9 [Doc. 11.41.2]

The Animals and Plants Committees have cooperated closely since COP10 to develop proposed amendments to Resolution Conf. 8.9 that will both include plants in the process and improve implementation. The Plants Committee submitted several proposed amendments for consideration by the Animals Committee, which provided its views and input to the Plants Committee and the Secretariat. This document was prepared by the Secretariat on behalf of the Animals and Plants Committees and contains draft revisions to Conf. 8.9. We provided detailed comments and suggestions on these proposed revisions of this vital resolution. The document also contains a proposed Decision that will direct the work of the Animals and Plants Committee in implementing this resolution. We have not yet fully reviewed the document, but the proposed U.S. position is to support it, possibly with some minor technical amendments.

42. Trade in Specimens of Species Transferred to Appendix II Subject to Annual Export Quotas [Doc. 11.42]

This document refers to populations of species transferred to Appendix II with a quota on exports, as a precautionary action. Parties are required to report on their exports under these COP-approved quotas, and this document provides the Secretariat an opportunity to comment on which Parties have and have not submitted the required reports. When we completed this notice, we still had not received this document. The United States will develop its position after the document has been received and reviewed.

43. Amendment of Resolution Conf. 5.10 on the Definition of ''primarily commercial purposes'' [Doc. 11.43]

This draft resolution, submitted by the Republic of South Africa, would amend parts of Resolution Conf. 5.10 and change the interpretation by Parties of the term ''primarily commercial purposes.'' Article III of the Convention requires that a Management Authority of the importing country issue an import permit or certificate of introduction from the sea for specimens of Appendix-I species only if satisfied that the specimens are not to be used for primarily commercial purposes. In 1985, the Parties, recognizing that interpretation of this term varied significantly among Parties, adopted Resolution Conf. 5.10 to help Parties evaluate whether an import could be considered ''primarily commercial.'' It defined the term ''commercial'' and provided general principles and examples to guide the Parties in assessing the commerciality of intended use of specimens to be imported.

The proposed resolution changes the definition of the term ''primarily commercial purposes.'' The proposed resolution requires a consideration of the benefits of a transaction to the exporting country when evaluating the commercial nature of an import permit for Appendix I specimens. It allows Parties to consider an import ''not for primarily commercial purposes'' even if it is commercial, if there is a conservation benefit in the exporting country. Parties would be asked to consider the translocation of wild specimens of Appendix-I species to private lands, such as game farms and ranches, as not primarily commercial if

the interest for conservation is demonstrated and predominant.

While the United States is sympathetic to the need to provide resources for conservation of species in the wild, this proposed resolution is not consistent with CITES, and the United States proposes to oppose it. This resolution would create loopholes for commercial trade in specimens of Appendix-I species, which violates the treaty and could lead to significant harm to populations in the wild. Article II, paragraph 1 of CITES states, in regard to Appendix-I species, ''Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.'' This resolution is not consistent with that article of the treaty. As drafted, the resolution also does not comply with Article III of the treaty, which requires that the importing Management Authority be satisfied that the purpose of the import is not for primarily commercial purposes. Whether a conservation benefit exists for the species is part of the ''non-detriment'' finding made by the Scientific Authorities of the exporting and importing countries, not part of the determination as to whether a transaction is for primarily commercial purposes.

44. Bushmeat as a Trade and Wildlife Management Issue [Doc. 11.44]

This document is a discussion paper submitted by the United Kingdom. The United States recognizes that the illegal international commercial trade in African bushmeat poses a serious threat to the survival of numerous protected species, including elephants and the great apes. Further, commercial-level bushmeat hunting threatens both CITES and non-CITES species. Because much of the illegal commercial trade involves CITES-listed species and occurs between CITES member countries, CITES is an appropriate forum for discussing this issue. However, the United States believes that it is important to limit this discussion to the aspects of the larger bushmeat issue that can be addressed within the scope of CITES. Therefore, the United States supports the idea of a discussion on the issue of commercial African bushmeat trade but believes that the United Kingdom's document is too broad. We appreciate that the United Kingdom is calling attention to this issue, and we anticipate being actively involved in discussions on the topic at COP11.

45. Amendment of Resolution Conf. 9.6

1. Concerning diagnostic samples, samples for identification, research and taxonomic purposes and cell cultures and serum for biomedical research [Doc. 11.45.1]

This proposed amendment to Resolution Conf. 9.6 on trade in readily recognizable parts and derivatives was submitted by Switzerland, Germany, and the United Kingdom. If this resolution is adopted, the Parties would agree that certain tissues are not readily recognizable. These tissues include extracted and purified DNA; samples of blood, hair, feather, and other tissues (fresh or preserved, not including live gametes and embryos) sent to laboratories for diagnostic, identification, research, and taxonomic purposes, with the aim of species' conservation, in quantities required to properly perform DNA analyses, sexing of individual specimens, and *in vivo* or *post mortem* veterinary diagnoses; and cell cultures and serum for biomedical research and the production of immunological products. This designation would allow such samples to be shipped across international boundaries without any CITES documents.

The United States recognizes that the timely movement of scientific research specimens can benefit the conservation of protected species and acknowledges that CITES permitting requirements should be simplified for these type of samples. However, the United States plans to oppose this amendment of Resolution Conf. 9.6, but work toward other approaches that could be considered (see next paragraph). The United States is concerned that this proposed resolution uses the purpose of the trade as the basis for whether specimens are considered readily recognizable, rather than limiting such a determination to characteristics of the specimens themselves. To treat such samples as not readily recognizable parts and derivatives could set a precedent that could potentially undermine the effectiveness of the Convention and species' conservation. The resolution does not address whether samples from wild specimens have been collected legally and in conjunction with the conservation agencies in the country of origin, or whether they were collected by persons with appropriate expertise to ensure that collection methods do not pose an unnecessary risk to animals, especially Appendix-I species. It apparently would allow the import of such Appendix I specimens for commercial purposes. Resolution Conf. 5.10, recommends that trade in biomedical specimens be subject to close scrutiny and presumed to be commercial. If adopted, the proposed resolution could eliminate controls on this commercial trade in Appendix-I species for all specimens except live animals. In addition, the resolution raises implementation issues. It does not define ''other tissues'' and does not address how a country would determine that samples meet the circumstances outlined in the resolution, that is, ensure that the samples to be traded are exempted tissues, are being used for one of the specified purposes, and are in quantities appropriate for the type of analysis.

The United States is evaluating a number of provisions the Parties could consider to assist in streamlining the movement of biological tissue samples. First, the Parties could agree to exempt from CITES requirements synthetically derived DNA that contains no part of the original template. This action would differentiate between DNA extracted directly from blood or tissue samples and synthetically derived DNA, but would not open the discussion to other parts and products that could be exempted from CITES requirements. Second, the Parties could consider whether to amend Resolution Conf. 2.14 on the noncommercial loan, donation, or exchange of museum and herbarium specimens to include preserved samples to be used for diagnostic, identification, research, or taxonomic purposes when between registered institutions. The Parties would need to consider a number of practical implementation issues, such as whether samples could be completely destroyed during analysis or whether a portion of each sample would need to be maintained for future scientific reference. The Parties could also consider treating serial cultured cell lines as a form of asexual propagation that could qualify for the exemptions of Article VII, paragraphs 4 and 5, even for biomedical purposes. Whether other types of specimens could also qualify as artificially propagated or bred in captivity could also be investigated. The United States welcomes suggestions on other approaches that could be considered for the movement of tissue samples.

2. Concerning final cosmetic products containing caviar [Doc. 11.45.2]

This resolution, submitted by Germany and Switzerland, recommends that Resolution Conf. 9.6 (Trade in Readily Recognizable Parts and Derivatives) be amended to eliminate CITES controls for cosmetic products containing caviar. The United States opposes this proposed amendment to

Resolution Conf. 9.6 and is concerned about this attempt to eliminate controls on commodities that may contain only small quantities of wildlife by considering that they are not readily recognizable. The precedent that could be set by adoption of this amendment could extend beyond the legal movement of Appendix II sturgeon caviar. There is no apparent difference in the recognition of this type of commodity than for any other cosmetic product or other processed products including medicinal or food items that contain small quantities of CITES-listed wildlife or plants. The United States proposes that Parties work on streamlining the permitting and control process regulating the international trade in these products rather than eliminate CITES controls.

46. Cross-border Movements of Live Animals for Exhibition [Doc. 11.46]

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. As outlined in our **Federal Register** notice of February 17, 2000 (65 FR 8190), the United States has a strong interest in making the current resolution on transborder movements of live-animal exhibitions (Resolution Conf. 8.16) work better. When we receive the relevant document from the Secretariat, the United States will review it and develop a negotiating position.

47. Revision of Resolutions on Ranching and Trade in Ranched Specimens [Doc. 11.47]

At its 15th meeting (July 1999), the Animals Committee agreed upon a draft resolution that would amend Resolution Conf. 10.18 on ranching and trade in ranched specimens, by incorporating the remaining elements of Resolution Conf. 5.16 (Rev.), on the marking of ranched specimens in trade. This text will be submitted to the meeting of the COP by the Secretariat, on behalf of the Animals Committee. Participants at that meeting raised concerns about the many different management techniques used in ranching and their implications for non-detriment findings, the need for increased monitoring of specimens released into the wild, and interpretation of the terms ''uniform marking system'' and ''year of production.''

When we completed this notice, we still had not received a document for this agenda item from the Secretariat. When we receive the document from the Secretariat, the United States will evaluate it and develop a negotiating position.

48. Registration of Operations Breeding Specimens of Appendix I Species in Captivity for Commercial Purposes [Doc. 11.48]

At COP10 the Parties discussed the issue of registration of facilities breeding Appendix I species in captivity for commercial purposes and if a need exists to amend or revise Resolution Conf. 8.15. This issue pertains to implementation of Article VII of the treaty. At COP10 the Parties adopted Decision 10.77, which instructed the Animals Committee to ''examine the effectiveness of and the need for the existing registration system for operations breeding specimens of Appendix I species in captivity for commercial purposes.'' The same Decision also called upon the Animals Committee to consider the proposed definition of ''bred in captivity for commercial purposes.'' In addition, Resolution Conf. 10.16 asked the Animals Committee to develop a list of species that are commonly bred in captivity to the second or following generations. These issues have been very controversial, as a great deal of misunderstanding has occurred. They were all discussed at great length at the 14th and 15th meetings of the CITES Animals Committee. The U.S. Government, through our offices, has worked actively on these issues since COP10.

In terms of the registration of facilities (Resolution Conf. 8.15), the United States' views and comments on this issue have focused on practical solutions to problems related to the registration of commercial breeding operations, including streamlining the process when feasible, allowing for and encouraging range state consultation, and defining breeding for commercial purposes, while at the same time supporting range countries and their concerns, particularly regarding the legality of origin of the founder stock of captive animals. Some countries support repealing the registration requirement altogether. After consultations with Mexico and Canada, we note that all countries in North America support retention of some registration procedure, particularly to provide opportunities for range state input.

In terms of the ''commonly bred'' list of species, a great deal of misunderstanding has developed concerning the meaning of paragraph (b)(ii)(C)(2)(a) of Resolution Conf. 10.16. This refers to species commonly bred in captivity throughout the world, and we are asked to determine which species, on a global basis, meet the bred-in-captivity criteria of Resolution Conf. 10.16 and qualify for the exemption of Article VII, paragraph 5. A working group of the Animals Committee was established on this issue, chaired by Chile, and the United States has been an active participant in the working group. We have not yet seen the final document on this issue. The United States proposes to support not developing a list of species commonly bred in captivity. Based on the United States' collective experience at the last two meetings of the Animals Committee, agreement on a list, and even the meaning of the list, is probably not possible. Continued efforts to produce a list will probably not advance the cause of global conservation. That is, the United States agrees with the idea of deleting paragraph (b)(ii)(C)(2)(a) of Resolution Conf. 10.16 in its entirety, but only as long as paragraph (b)(ii)(C)(2)(b) is retained, and the rest of the text in Resolution Conf. 10.16 remains virtually the same.

The Chair of the Animals Committee will submit a document outlining all of the discussions on this complex issue. Although the United States commented on earlier drafts, when we completed this notice, we still had not received the final document.

49. Animal Hybrids: Amendment of Resolution Conf. 10.17 [Doc. 11.49]

When we completed this notice, we still had not received this document, which we assume is a document that will be prepared by the Secretariat. We assume as well that this document will deal with aspects of Resolution Conf. 10.17, ''Animal Hybrids,'' that refer to the ''recent lineage'' of hybrid animals. The resolution uses the term ''recent lineage,'' but does not define the term. The Animals Committee evaluated the issue, and recommended that the term ''recent lineage'' of a hybrid animal should be understood to mean the previous four generations of its lineage. The Secretariat has made this recommendation to the Parties in Notification No. 1998/28, dated 30 June 1998. We assume that this document will recommend amending Conf. 10.17 to clarify this point since such a determination is up to the Conference of the Parties, ultimately, and not the Animals Committee or the Secretariat. If that is the case, the United States proposes to support the recommendation.

50. Use of Microchips for Marking Live Animals in Trade [Doc. 11.50]

At the 15th meeting of the Animals Committee (Madagascar, July 1999), a document was presented by the Chair of

the working group (Czech Republic) considering this issue under Resolution Conf. 8.13 (''Use of Coded-microchip Implants for Marking Live Animals in Trade''). At the Animals Committee meeting, however, participants determined that the document contained recommendations that were ''not realistic.'' Therefore, the Animals Committee decided the issue should be referred to a smaller working group with the same Chair. This document (Doc. 11.50) was prepared by the Secretariat on behalf of the Animals Committee. It contains draft amendments to Resolution Conf. 8.13, based on discussions at the 15th meeting of the Animals Committee and recommended amendments endorsed by the Committee. The document also contains additional proposed amendments recommended by the Czech Republic, as Chair of the working group, based on discussions within the working group. The United States proposes to support the recommended amendments to Resolution Conf. 8.13 from the Animals Committee. The United States is still evaluating the subsequent proposed amendments from the Czech Republic.

51. Universal Tagging System for the Identification of Crocodilian Skins [Doc. 11.51]

When we completed this notice, we still had not received this document from the Secretariat, although at the 15th meeting of the Animals Committee, the United States participated in drafting the proposed changes to Resolution Conf. 9.22, which this document proposes to amend. We expect the changes discussed in Doc. 11.51 to include the clarification of export procedures for specimens subject to quotas and standards to ensure that skins subject to quotas are tagged before export permits are issued (ensuring that unused tags are destroyed or not reissued) and deleting a section referring to unused stocks of tags that do not conform with the resolution. The proposed Animals Committee amendments are small adjustments to a resolution that has been very helpful in monitoring trade in crocodilian skins. If the final document reflects the changes agreed to at the Animals Committee, the United States proposes to support the changes.

52. Movement of Sample Crocodilian Skins [Doc. 11.52]

This document is a draft decision submitted by the United States. Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will work for adoption of this document by the Parties.

53. Universal Labeling System for the Identification of Sturgeon Specimens (caviar)—[Doc. 11.53]

Resolution Conf. 10.12 (''Conservation of Sturgeons'') directs the Secretariat, in consultation with the Animals Committee, to explore the development of a uniform marking system for sturgeon parts and derivatives to assist in identification of the species. The resolution recommends that this marking system be developed in consultation with appropriate experts in fisheries and industry and in collaboration with range States.

A working group created at the 14th Meeting of the Animals Committee drafted recommendations for the creation of a universal marking system for sturgeon. This document was then discussed at the 15th Meeting of the Animals Committee. The members of this working group, which included the United States, discussed at length the draft document on sturgeon marking and submitted a report on their conclusions. The group concluded that, initially, developing a marking system for caviar only would be most feasible. The group further recognized that a marking system should be recommended for the export of caviar from producing countries (primarily exporting countries) to the initial importing country. It was further agreed that the marking system should be as compatible as possible with those marking systems already in place in some caviar-producing countries.

When we completed this notice, we still had not received the document for this agenda item from the Secretariat. When we receive the document from the Secretariat, the United States will evaluate it and develop a negotiating position. The United States supports efforts to more effectively monitor the international movement of caviar of Caspian Sea sturgeon species. If the marking system outlined in this document can be easily implemented, and is also adequate to provide the necessary information, the United States is prepared to support it.

54. Transport of Live Animals [Doc. 11.54]

Resolution Conf. 10.21 (''Transport of Live Animals'') requests that Parties record and report to the Secretariat mortality data for CITES-listed species in trade and instructs the Secretariat to report on Parties that do not submit information. Very few Parties have complied. In Notification to the Parties No. 1999/43, the Secretariat requested that the Parties incorporate into their domestic legislation the IATA (International Air Transport Association) Live Animals Regulations (LAR), and that they report on their progress in doing so; ten Parties reported to the Secretariat in response to this Notification. We have incorporated the IATA LAR for mammals and birds into our humane transport regulations, and we are in the process of incorporating the IATA LAR for reptiles and amphibians into our humane transport regulations. At its January 1999 meeting, the Transport Working Group of the Animals Committee developed a simplified mortality/injury reporting form and asked the Parties to report data on selected species. Again, very few Parties have reported.

When we completed this notice, we still had not received the document for this agenda item from the Secretariat. When we receive the document from the Secretariat, the United States will evaluate it and develop a negotiating position. Although this document is not yet available, we expect it to focus on data reporting problems and improved monitoring of live animal transport. The United States is monitoring, at its ports of entry, the trade in these 10 species as recommended on this form and will report this data.

55. Definition of the Term ''prepared'' [Doc. 11.55]

This document is a draft resolution submitted by Kenya. The resolution emphasizes that the term ''prepared,'' as used in Articles III, IV, and V of CITES, regarding the shipping of live CITES specimens, has not been defined by the Parties but is generally considered to mean the act of packing live animals for shipment and export. The resolution proposes to define the term ''prepared'' to include all processes from the time of capture of live specimens to the point of export. The United States proposes to support this resolution from Kenya.

This proposed definition is consistent with conditions that the United States uses on permits issued under stricter domestic legislation, such as the Endangered Species Act and the Wild Bird Conservation Act (WBCA). Many permits issued under the WBCA include the following condition: ''Furthermore, you should provide a description of collection methods, including measures taken to prevent incidental take (i.e, removal of more specimens from the wild than are actually requested for import).''

56. Trade in Traditional Medicines [Doc. 11.56]

Decision 10.82 directs the Animals Committee to review the trade in animal species for use in traditional medicines, in order to assess its implications for wild populations. At the 15th meeting of the Animals Committee, it became clear that the Committee could not carry out Decision 10.82 without basic information on the many ingredients and uses of CITES-listed species parts or derivatives in traditional medicines, worldwide. The use of many CITES-listed species in traditional medicines remains undocumented, and information is sketchy or not available for entire geographic regions, such as Africa. For similar reasons, at its 42nd meeting, the Standing Committee moved to redraft Decision 10.143, which directs the Secretariat to review the roles of national legislation, law enforcement, forensics identification, and captive breeding, in regulating the trade in traditional medicines that contain parts or derivatives of CITES-listed species, and to report its findings at COP11.

When we completed this notice, we still had not received the document for this agenda item from the Secretariat. When we receive the document, the United States will evaluate it and develop a negotiating position.

57. The Information Management Strategy [Doc. 11.57]

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. In order to effectively implement the Convention, CITES authorities must manage, interpret, and use relevant trade, law enforcement, and biological information. The CITES community generates large volumes of useful data, but the data does not always reach those who need it. At its 37th meeting, the Standing Committee proposed an Information Management Strategy to coordinate the delivery of such data, and to help improve the information management capacity of Parties that require assistance. At COP10, the World Conservation Monitoring Centre (WCMC) submitted a document at the request of the Secretariat that included an Information Management Strategy. The Parties adopted this document, which directed the Secretariat (under Phase 1 of the Strategy) to develop electronically accessible information and to commission a pilot study in one CITES region (Africa was selected) to identify requirements for improving electronic communications among the Parties and the Secretariat. The United States supported the Information Management Strategy adopted at COP10 and continues to support progress toward developing and improving the electronic accessibility of information worldwide.

The United States assumes that document Doc. 11.57 will include the Secretariat's report on the Phase 1 pilot study, as well as some projected costs for funding Phase 2. Phase 2 of the Strategy directs the Secretariat to establish a program of workshops to cover all CITES regions, develop a system to fulfill the needs of Parties identified in Phase 1, and maintain up-to-date standardized products to support the Parties' implementation of CITES. The United States will support the continuance of the Information Management Strategy at COP11.

58. Potential Risk of Wildlife Trade to the Tourism Industry [Doc. 11.58]

This document is a draft resolution submitted by Kenya. The document discusses the potentially detrimental effects of wildlife poaching, and subsequent enforcement actions, on the ecotourism industry. It also cautions that poorly planned wildlife tourism can be harmful to both local economies and the ecosystem. This resolution urges the Parties to recognize the potential economic benefits of appropriately planned wildlife tourism, and it further recommends that the Parties work to minimize the social, cultural and ecological impacts when developing wildlife tourism programs. The United States agrees that these are important considerations but at this time is undecided on whether to support this resolution as drafted.

Consideration of proposals for amendment of Appendices I and II

59. Proposals to Amend Appendices I and II [Doc. 11.59]

In this section, we present the proposed U.S. negotiating positions on species amendment proposals submitted by other countries. Sixty-two species amendment proposals have been submitted for consideration at COP11, including 15 submitted or cosponsored by the United States. A complete list of all proposals, including those submitted or cosponsored by the United States, follows. They are listed in order of the proposal number (''Prop.'') assigned to them by the CITES Secretariat; the proposals will be considered in this order at the meeting of the COP, with the exception that all plant proposals will be discussed first. Only a brief discussion and reason are provided for proposals the United States supports. A more in-depth discussion and reasons are provided for proposals the United States opposes. Proposals for which the United States is undecided are so indicated, as is the basis for our indecision. Proposals submitted or cosponsored by the United States are listed but are not discussed here. Please refer to our **Federal Register** notice February 17, 2000 (65 FR 8190) for a discussion of these proposals and our reasons for submitting or co-sponsoring them.

1. Proposals resulting from the periodic review by the Plants Committee [Doc. 11.59.1]

We note that Proposals 11.1 through 11.11 were discussed at the ninth meeting of the Plants Committee in Darwin, Australia (June 7–11, 1999). The Plants Committee, under Resolution Conf. 9.1, Annex 3, regularly reviews plant species included in the CITES Appendices. We reviewed the status of several native U.S. species at the request of the Plants Committee. Many of these species are not in recorded international trade in wild specimens, and the Plants Committee considered and decided to recommend their deletion from the Appendices or transfer from Appendix I to II. This recommendation is based on the view that species not in international trade in wild specimens should not be included in the Appendices, and that the conservation of species native to one country should be addressed through domestic management and trade control measures. The United States has submitted one such proposal (see Prop. 11.57, below). However, some of these species are listed on the U.S. Endangered Species Act, or are protected under State laws in the United States. In several cases, demand for wild specimens exists, and their inclusion and retention in the CITES Appendices is important, especially since CITES listing strengthens enforcement of trade restrictions by bringing the import controls of other countries to bear.

The United States believes that if a CITES-listed species, whether in Appendix I or II, is not in international trade, the species should not necessarily be removed from the Appendices, if trade demand exists. Indeed, the lack of trade could mean that a Scientific Authority of the range country could not make the required non-detriment finding, and the Management Authority, therefore, could not issue permits. In such cases, the lack of trade means that CITES is being effectively implemented. For many of these species, the United States objects to their deletion or downlisting, and so informed the

Secretariat and Chair of the Plants Committee. Switzerland has submitted the proposal at request of the Plants Committee. You may obtain more information about some of these species and the United States' reviews for the Plants Committee on our web site (http://international.fws.gov/global/plantpro.html). The United States supports the activities and actions of the Plants Committee, but also believes that the wishes of range countries should receive the highest consideration in decisions on these proposals.

Prop. 11.1. Deletion of *Ceropegia* spp. from Appendix II. Submitted by Switzerland. Proposed U.S. position: Support, with possible exception of *C. armandii*.

This genus consists of about 200 species, which are widely distributed in tropical and subtropical areas from western Africa to eastern China. Most are not traded internationally, or are traded in very small numbers. In general, threats to these species are from habitat destruction and local use. Ninety-eight percent of the international trade that does occur is in artificially propagated plants. However, in 1985, one shipment involving 40,000 individuals of artificially propagated *C. armandii*, an endangered species, was recorded. In view of the potential for large-scale trade in this species, the United States is considering supporting this proposal with the exception of *C. armandii*.

Prop. 11.2. Deletion of *Frerea indica* from Appendix II. Submitted by Switzerland. Proposed U.S. position: Support.

This species is endemic to India. Only a few individuals exist in the wild. It is highly endangered by fire, grazing, natural disaster, and insects. International trade does not appear to affect this species as it is not collected from the wild for export. *F. indica* appears in trade only in small numbers, and as artificially propagated specimens. It is easily propagated through seeds and stem cuttings. To the United States' knowledge, India has not expressed opposition to this deletion.

Prop. 11.3. Deletion of *Byblis* spp. from Appendix II. Submitted by Australia. Proposed U.S. position: Support.

Most of the five species of *Byblis* are found in remote locations in Australia and are of little horticultural value, though some are sought by carnivorous plant enthusiasts. Limited trade in wild-collected specimens of this taxon has occurred since it was originally listed. Small quantities of seed are permitted to be harvested from State lands in Australia each year. At least four, if not all, of the species of this genus are annual and easily propagated by seed. In spite of unsubstantiated reports of illegal collection from the wild in Australia, these species are considered secure and adequately protected as the only serious concern for this genus regards the southern form of *Byblis gigantea*, which would remain subject to export controls, according to Australian law.

Prop. 11.4. Transfer of *Disocactus macdougalli* from Appendix I to II. Submitted by Switzerland. Proposed U.S. position: Support.

This species, endemic to Mexico, has been found to be more abundant than once thought. It is not threatened by international trade as it is not of interest to collectors. In addition, Mexico prohibits the export of all wild-collected specimens of this species, so Appendix II listing would provide the same amount of protection to this species as it has currently. International trade in this species is negligible and is solely limited to artificially propagated plants. It is easily grown from seed. Habitat destruction is the main threat to this species.

Prop. 11.5. Transfer of *Sclerocactus mariposensis* from Appendix I to II. Submitted by Switzerland. Proposed U.S. position: Oppose.

This species is native to the United States. It is listed as Threatened under the U.S. Endangered Species Act (ESA), in part due to the significant reduction and extirpation of sites of this taxon by amateur and commercial collectors. The U.S. Recovery Plan for the species specifically recommends that CITES protection be maintained at the highest possible level. International demand for this species is documented in U.S. CITES Annual Report data for the years 1994–1997, which indicate an average of 48 export shipments of artificially propagated seeds of *Sclerocactus mariposensis* per year, with an average of 2,225 seeds per shipment, primarily to Europe and Japan. The Management Authority of Switzerland has provided us with additional information on the distribution and abundance of *S. mariposensis* in Mexico, where it is apparently more secure than once thought. In addition, the results of a recent study of *S. mariposensis*, which came to our attention since we conducted our review of this species, suggest that its classification under the Endangered Species Act may warrant reconsideration. The United States will consider proposing to transfer this species to Appendix II in the future, pending continued monitoring of trade and clarification of its status in the wild. The United States believes that such an action would be premature at this time, however, particularly since strict control of trade is currently recommended for recovery. The United States has already informed the Plants Committee and the CITES Secretariat of its opposition to this proposal.

Prop. 11.6. Deletion of *Cephalotus follicularis* from Appendix II. Submitted by Australia. Proposed U.S. position: Support.

Estimates of the frequency and abundance populations of *Cephalotus follicularis*, a carnivorous plant endemic to southwestern Australia, suggest that there are many hundreds of populations each consisting of many thousands of individuals. This species is commonly cultivated by insectivorous plant enthusiasts and commercial nurseries in Australia, as it is easily propagated from small segments of rhizomes. Trade data indicates that the limited international trade in this species is confined to artificially propagated plants. This species is adequately protected in its area of endemism. Australian law will continue to regulate collection from the wild and impose export controls.

Prop. 11.7. Transfer of *Dudleya stolonifera* and *Dudleya traskiae* from Appendix I to II. Submitted by Switzerland. Proposed U.S. position: Oppose.

These species are native to the United States. *Dudleya stolonifera* is listed as Threatened under the Endangered Species Act. It has an extremely restricted range and is considered Endangered by the World Conservation Union (IUCN). The majority of *D. stolonifera* populations appear to be declining due to habitat loss and collection. The Pacific Northwest Regional Office of the U.S. Fish and Wildlife Service ''strongly supports continued inclusion in Appendix I for reasons of limited species distribution, accessibility, and interest in this species from collectors and the nursery trade.'' *Dudleya traskiae* is listed as Endangered under the Endangered Species Act, and is considered Endangered by the IUCN. *D. traskiae* populations are at least stable and may be increasing, but are so restricted in their distribution that any collection could lead to extirpation. The Recovery Plan for *D. traskiae* recognizes collection as a major risk for this species. Though these species are not known to be in legal international trade at this time, potential international demand exists for all *Dudleya* species. The United States believes current CITES protections should be maintained for these species, and that they continue to meet the criteria for retention in Appendix I, under Resolution Conf. 9.24. The United States has already

informed the Plants Committee and the CITES Secretariat of its opposition to this proposal.

Prop. 11.8. (a) Change the listings of Cyatheaceae spp. to *Cyathea* spp. and (b) Change the listing of Dicksoniaceae spp. to *Dicksonia* spp. (the Americas only) and *Cibotium barometz*. Submitted by Switzerland. Proposed U.S. position: Support both (a) and (b).

Tree ferns are found throughout the tropics. About 60 species appear in international trade, 10 of which are traded in significant numbers. All of the species in the Cyatheaceae family that are traded on a relatively large scale are members of the genus *Cyathea*, which would still be protected by CITES if this proposal is adopted. Since identifying the products of *Cyathea* spp. found in trade to the species level is difficult, protection for the entire genus should be maintained. Due to look-alike reasons, the United States supports maintaining listing for all *Dicksonia* spp. in the Americas in order to ensure protection for *Dicksonia sellowiana*, a species from South America of conservation concern. Trade in other species of *Dicksonia* originates in Australia and New Zealand where these species are adequately protected. The United States also supports maintaining protection for *Cibotium barometz*, which is widely traded for medicinal purposes. All species of tree ferns native to the United States are in the genera *Cyathea* and *Dicksonia* and would still be protected under CITES.

Prop. 11.9. Deletion of *Shortia galacifolia* from Appendix II. Submitted by Switzerland. Proposed U.S. position: Undecided; need to consult further with relevant States.

This species is native to the United States. Populations of *Shortia galacifolia* have been lost in the past due to horticultural collection and multiple dam construction projects. This species has a very limited distribution, but is locally common where it is found. It is listed as Endangered in the States of Georgia and North Carolina, and is considered Vulnerable by the IUCN. However, *S. galacifolia* is fairly widely cultivated and not known to be internationally traded. For these reasons, the United States could possibly support the recommendation of the Plants Committee to remove this species from Appendix II. The United States does, however, need to consult the States prior to making a decision on this proposal. The United States has already informed the the Plants Committee and the Secretariat of its concerns.

Prop. 11.10. Deletion of *Lewisia cotyledon*, *Lewisia maguirei*, and *Lewisia serrata* from Appendix II. Submitted by Switzerland. Proposed U.S. position: Oppose.

These species are native to the United States. *Lewisia cotyledon* is apparently secure, but factors exist to cause some concern regarding this species. The U.S. Forest Service cites collection from the wild for the horticultural trade as one of the primary activities that could pose a threat to this species. In addition, the Forest Service has documented specific, though limited, instances of collection pressure on some varieties of this species (especially *Lewisia cotyledon* var. *heckneri*). This taxon is found in international trade, but it is also fairly widely grown, and most *L. cotyledon* plants and seeds for sale come from cultivated sources. *Lewisia maguirei* has a very limited range and is considered Endangered by the IUCN. However, it is protected from most threats, including collection pressures, by its remote habitat. *L. maguirei* is considered of interest to alpine plant enthusiasts, so potential international demand exists for this species, though it is very rarely cultivated and not known to be in trade at this time. *Lewisia serrata* is considered Very Rare and Endangered throughout its range by the California Native Plant Society and Vulnerable by the IUCN. Though monitoring indicates that some populations are currently stable, the Forest Service reports that horticultural collection is a potential threat, and that at least one population is suspected to have been extirpated by illegal collection for this purpose.

The Forest Service's Interim Management Guide for *Lewisia cantelovii* and *Lewisia serrata* cites poaching of *L. serrata* by private or commercial collectors as a potential threat to its existence. *L. serrata* is likely to be cultivated to a limited extent and traded internationally on a small scale, though no exports have been recorded in recent years. Due to the potential for international trade in specimens collected from the wild, the United States believes that Appendix II offers these three species valuable protection, even though no legal trade in wild-collected individuals of these species has been recorded in recent years. The United States has already informed the Plants Committee and the Secretariat of its opposition to this proposal.

Prop. 11.11. Deletion of *Darlingtonia californica* from Appendix II. Submitted by Switzerland. Proposed U.S. position: Oppose.

This species is native to the United States. Although it is generally not known to be declining in distribution or abundance, the Forest Service has informed us that collection is a definite threat to this species and that many of the plants in trade are likely to have been collected from the wild. International demand for *Darlingtonia californica* clearly exists due to documented international trade in artificially propagated specimens. Though no legal trade in wild-collected plants has been recorded in recent years, this species is still subject to collection from the wild for international trade. Therefore, we consider Appendix II to be appropriate at this time, although we intend to review this species for possible delisting prior to COP12. The United States has already informed the Plants Committee and the Secretariat of its opposition to this proposal.

2. Proposals concerning export quotas for specimens of species in Appendix I or II [Doc. 11.59.2]

Prop. 11.12. Maintenance of the Tanzanian population of *Crocodylus niloticus* (Nile crocodile) in Appendix II, with an annual export quota of 1,600. Submitted by Tanzania. Proposed U.S. position: Undecided.

We are continuing to evaluate this proposal, pending our evaluation of the results of discussions at the Crocodile Specialist Group meeting in Cuba in January 2000.

3. Other proposals [Doc. 11.59.3]

Prop. 11.13. Transfer of *Manis crassicaudata*, *Manis pentadactyla*, and *Manis javanica* (Asian pangolins) from Appendix II to I. U.S. proposal cosponsored by India, Nepal, and Sri Lanka.

Prop. 11.14. Transfer of *Tursiops truncatus ponticus* (Bottlenose dolphin, Black Sea/Sea of Azov population) from Appendix II to I. U.S. proposal cosponsored by Georgia.

Prop. 11.15–11.18. Transfer of following stocks of whales from Appendix I to Appendix II: Eastern North Pacific stock of *Eschrichtius robustus* (gray whales), and Southern Hemisphere, Okhotsk Sea -West Pacific, and North-east Atlantic and North Atlantic Central stocks of *Balaenoptera acurostrata* (minke whales). Submitted by Japan and Norway. U.S. position: Oppose.

The United States opposes the downlisting of these populations of whales, which are subject to the International Whaling Commission (IWC) moratorium on commercial whaling. The United States continues to believe that it is inappropriate to consider these species for downlisting until the IWC completes the revision of its management regime in order to bring all whaling under effective IWC control, as discussed below. The United States

also believes that these species do not qualify for transfer to Appendix II, under Annex 4 of Resolution Conf. 9.24. The discussion that follows relates to all four of these proposals.

The United States believes that CITES should honor the request for assistance in enforcing the moratorium which the IWC communicated to the CITES Parties in a resolution passed at the Special Meeting of the IWC in Tokyo, December, 1978. This request was answered by the CITES Parties in Resolution Conf. 2.9 (''Trade in Certain Species and Stocks of Whales Protected by the International Whaling Commission from Commercial Whaling''), which calls on the Parties to ''agree not to issue any import or export permit or certificate'' for introduction from the sea under CITES for primarily commercial purposes ''for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling.'' Resolution Conf. 2.9 was overwhelmingly reaffirmed by the Parties at COP10, by the defeat of a draft resolution proposed by Japan to repeal this resolution. At the 50th meeting of the IWC subsequent to COP10, the IWC passed a resolution that expressed its appreciation for the reaffirmation of this link between the IWC and CITES. IWC Resolution IWC/51/43 also welcomes the CITES COP10 decision ''to uphold CITES Resolution Conf. 2.9.'' Support for these requests of the IWC necessitate opposition to any proposal to transfer whale stocks to Appendix II.

Additionally, according to Resolution Conf. 9.24, Annex 4, *Precautionary Measures,* paragraph 2.B. a. ''Even if such species do not satisfy the relevant criteria in Annex 1, they should be retained in Appendix I unless * * * the species is likely to be in demand for trade, but its management is such that the Conference of the Parties is satisfied * * * with I) implementation by the range States of the requirements of the Convention, in particular Article IV; *and* ii) appropriate enforcement controls and compliance with the requirements of the Convention.'' Unfortunately, these ''appropriate enforcement controls,'' as part of a Revised Management Scheme, have not yet been adopted by the IWC. These whale stocks do not qualify for transfer to Appendix II, under Resolution Conf. 9.24.

The assumption in the downlisting proposal for these populations of minke whales and gray whales is that the differences within species are discrete, occur in all individuals, and can be readily differentiated by forensic DNA methods. The United States disagrees scientifically with the statement that the precautionary measures of Resolution Conf. 9.24 Annex 4 are fulfilled because DNA analysis techniques allow for the identification of whale stocks, and even individual whales. This is not the case, as the experts who have developed these methods will attest and the scientific literature reinforces. While clear markers differentiate species, finding forensic markers for all individuals within a population or stock is much more problematic. Doing so is usually possible only when the population distinctiveness approaches that of species. Moreover, the use of Japanese and Norwegian DNA registers that are not available for scrutiny by other whale DNA experts is counter to all principles of forensic identification. Only when there is agreement on DNA markers, tested against adequate sample sizes of the whale stocks in question, could they be utilized for verification purposes. This research may show significant evolutionary units within some stocks, and it may also show significant gene flow between stocks making forensic identification of a meat sample to a particular stock impossible.

The previous IWC management regime was not effective in managing the whaling industry. While it was in place, the whaling industry drastically depleted whale stocks until many became threatened with extinction. Since the establishment of the moratorium on global whaling, coupled with the CITES Appendix I listings, the Commission has continued to work on activities that the United States believes must be completed before commercial whaling can even be considered. This management regime must include devising an observation and monitoring program to ensure that quotas are not exceeded. Thus, the United States opposes even considering the downlisting of any whale species until the IWC has taken steps to create and institutionalize a revised management regime that brings all whaling under effective IWC monitoring and control.

Prop. 11.15. Transfer of the Eastern North Pacific stock of *Eschrichtius robustus* from Appendix I to II. Submitted by Japan. Proposed U.S. position: Oppose.

The gray whale's range previously encompassed the Atlantic and Pacific Oceans. The Atlantic population was hunted to extinction by the early 1900s, restricting the gray whale to shallow waters of the Pacific Ocean. Two stocks are recognized in the North Pacific, the western stock or Korean stock, which ranges along the Siberian coast and in the southern Chukchi and northern Bering Seas, and the eastern or California stock, which ranges from the Russian Federation past Canada and the United States to Mexico. The United States opposes this proposed downlisting for the following reasons. As a range state, Japan consulted the United States on their draft of this proposal, and the United States provided Japan its comments and opposition to this proposal. You may obtain that correspondence on our web site. Japan noted the United States' opposition in its proposal but did not elaborate on the United States submission. The United States understands that Mexico, as a range state as well, also provided its comments in opposition to the draft proposal, although they were not incorporated or even noted by Japan in the final proposal. In addition to the above comments, the United States notes that the proposal states that the species should be transferred to Appendix II because the United States removed the species from our domestic Endangered Species Act. This action, in itself, it not adequate justification for CITES downlisting, especially since the grey whale remains fully protected by our Marine Mammal Protection Act.

Prop. 11.16. Transfer of the Southern Hemisphere stock of *Balaenoptera acutorostrata* from Appendix I to II. Submitted by Japan. Proposed U.S. position: Oppose.

According to this proposal, range States for this population are Argentina, Australia, Brazil, Chile, Comoro, Congo, Ecuador, Fiji, France, Gabon, Indonesia, Kenya, Madagascar, Mauritius, Mozambique, Namibia, New Zealand, Papua New Guinea, Peru, Seychelles, South Africa, Tanzania, the United States, the United Kingdom, Uruguay, and Vanuatu. The United States opposes this proposal. The United States disagrees scientifically with the statement in the proposal that ''DNA analysis technique advanced enough to distinguish individual whales are already available and will be used to track and control the movements of the whale specimens.'' No such techniques are available, and full transparency and publication of all DNA sequences by the Government of Japan is vital to fully evaluate this contention. As a range state, Japan consulted the United States on their draft of this proposal, and the United States provided Japan its comments and opposition to this proposal. You may obtain that correspondence on our web site. Japan noted the United States' opposition in its proposal but did not elaborate on the United States' submission.

Prop. 11.17. Transfer of the Okhotsk Sea—West Pacific stock of *Balaenoptera acutorostrata* from Appendix I to II.

Submitted by Japan. Proposed U.S. position: Oppose.

According to this proposal, range States for this population are Canada, the People's Republic of China, Indonesia, Korea, Marshall Islands, the Philippines, the Russian Federation, and the United States. The United States opposes this proposal. As a range state, Japan consulted the United States on their draft of this proposal, and the United States provided Japan its comments and opposition to this proposal. You may obtain that correspondence on our web site. Japan noted the United States opposition in its proposal but did not elaborate on the United States' submission.

Prop. 11.18. Transfer of the North-east Atlantic stock & the North Atlantic Central stock of *Balaenoptera acutorostrata* from Appendix I to II. Submitted by Norway. Proposed U.S. position: Oppose.

According to the Norwegian proposal, range States for these populations are Belgium, Denmark (including the Faroe Islands and Greenland), France, Germany, Iceland, Ireland, the Netherlands, Norway, Portugal, the Russian Federation, Spain, Sweden and the United Kingdom. The United States opposes this proposal. The United States is concerned scientifically with the statement in the proposal that ''Norway has established a trade control system based on DNA analysis techniques with samples taken from each individual whale.'' No such system is available, and full transparency and publication of all DNA sequences by the Government of Norway is vital to fully evaluate this contention.

Prop. 11.19. Deletion of *Parahyaena (Hyaena) brunnea* (Brown hyaena) from Appendix II. Submitted by Namibia and Switzerland. Proposed U.S. position: Support.

The brown hyaena is not found in significant numbers in international trade. It was transferred from Appendix I to Appendix II at COP9, with the ultimate goal of removing the species entirely from the Appendices after trade was monitored for at least two intervals between meetings of the Conference of the Parties (in compliance with precautionary measures provided in Annex 4 of Resolution Conf. 9.24). According to trade data in the proposal, less than three live specimens and four dead specimens were traded annually from 1994 through 1997. The United States agrees with the proponents that the species does not satisfy the criteria for listing or retention in Appendix II.

Prop. 11.20. Transfer the South African population of *Loxodonta africana* (African elephant) from Appendix I to II, with annotations for trade. Submitted by South Africa. Proposed U.S. position: Undecided.

South Africa has proposed the transfer to Appendix II of its population of elephants, allowing for: (1) trade in raw ivory under a quota of 30 tonnes of whole tusks of government-owned stock originating from Kruger National Park; (2) trade in live animals for reintroduction purposes; (3) trade in hides and leather goods; and (4) trade in hunting trophies for noncommercial purposes. The United States is continuing to evaluate this proposal, in the context of all species proposals relevant to the African elephant (11.20–11.25), and other relevant documents (Documents 11.26, 11.31.1, 11.31.2, 11.31.3, and 11.31.4). These issues are very complex, particularly since this proposal requests an annotation that allows for commercial ivory trade. When we completed this notice, we still had not received all of the relevant documents to be evaluated at COP11 dealing with ivory trade, and the United States is continuing to evaluate the impact of decisions and proposals adopted at COP10.

Prop. 11.21. Maintain the Botswana population of *Loxodonta africana* (African elephant) in Appendix II, with annotations for trade. Submitted by Botswana. Proposed U.S. position: Undecided.

Botswana's population was transferred to Appendix II at COP10, with an annotation that, among other aspects, allowed for a one-time sale of ivory stocks to Japan. Botswana has proposed to amend that annotation to allow for commercial trade in government-owned stocks of ivory to ''CITES-approved trading partners who will not re-export and subject to an annual quota of 12 tonnes (12,000 kg) of ivory.'' The United States is continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (11.20–11.25), and other relevant documents (Documents 11.26, 11.31.1, 11.31.2, 11.31.3, and 11.31.4). These issues are very complex, particularly since this proposal requests increased commercial ivory trade. When we completed this notice, we still had not received all of the relevant documents to be evaluated at COP11 dealing with ivory trade, and the United States is continuing to evaluate the impact of decisions and proposals adopted at COP10.

Prop. 11.22. Maintain the Namibia population of *Loxodonta africana* (African elephant) in Appendix II, with annotations for trade. Submitted by Namibia. Proposed U.S. position: Undecided.

Namibia's population was transferred to Appendix II at COP10, with an annotation that, among other aspects, allowed for a one-time sale of ivory stocks to Japan. Namibia has proposed to amend that annotation to allow for commercial trade in government-owned registered stocks of raw ivory (whole tusks and pieces), to ''trading partners that have been verified by the CITES Secretariat to have sufficient national legislation and domestic trade controls to ensure that ivory imported from Namibia will not be re-exported and will be managed according to all requirements of Resolution Conf. 10.10 concerning domestic manufacturing and trade,'' with an annual quota of 2,000 kg ivory. The United States is continuing to evaluate this proposal, in the context of all species proposals relevant to the African elephant (11.20–11.25), and other relevant documents (Documents 11.26, 11.31.1, 11.31.2, 11.31.3, and 11.31.4). These issues are very complex, particularly since this proposal requests increased commercial ivory trade. When we completed this notice, we still had not received all of the relevant documents to be evaluated at COP11 dealing with ivory trade, and the United States is continuing to evaluate the impact of decisions and proposals adopted at COP10.

Prop. 11.23. Maintain the Zimbabwe population of *Loxodonta africana* (African elephant) in Appendix II, with annotations for trade. Submitted by Zimbabwe. Proposed U.S. position: Undecided.

Zimbabwe's population was transferred to Appendix II at COP10, with an annotation that, among other aspects, allowed for a one-time sale of ivory stocks to Japan. Zimbabwe has proposed to amend that annotation to allow for commercial trade in stocks of raw ivory (whole tusks and pieces), ''to trading partners with adequate controls and enforcement measures,'' with an annual quota of 10,000 kg ivory. The United States is continuing to evaluate this proposal, in the context of all species proposals relevant to the African elephant (11.20–11.25), and other relevant documents (Documents 11.26, 11.31.1, 11.31.2, 11.31.3, and 11.31.4). These issues are very complex, particularly since this proposal requests increased commercial ivory trade. When we completed this notice, we still had not received all of the relevant documents to be evaluated at COP11 dealing with ivory trade, and the United States is continuing to evaluate the impact of decisions and proposals adopted at COP10.

Prop. 11.24. Transfer to Appendix I all populations of *Loxodonta africana*

(African elephant) currently listed in Appendix II. Submitted by India and Kenya. Proposed U.S. position: Undecided.

The United States is continuing to evaluate this proposal, in the context of all species proposals relevant to the African elephant (11.20–11.25), and other relevant documents (Documents 11.26, 11.31.1, 11.31.2, 11.31.3, and 11.31.4). When we completed this notice, we still had not received all of the relevant documents to be evaluated at COP11 dealing with ivory trade, and the United States is continuing to evaluate the impact of decisions and proposals adopted at COP10.

Prop. 11.25. Amend the annotation concerning Appendix II populations of *Loxodonta africana* (African elephant), regarding the destination of live animals. Submitted by Switzerland. Proposed U.S. position: Undecided.

The United States is continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (11.20–11.25), and relevant documents (Documents 11.26, 11.31.1, 11.31.2, 11.31.3, and 11.31.4). The United States believes that this proposal should be considered together with Document 11.26, submitted by Kenya, and also dealing with the conditions of live animals in trade under an annotation that specifies that commercial trade is allowed to ''suitable and acceptable destinations.'' The United States also supports Doc. 11.24, ''Use of Annotations in the Appendices,'' which was drafted and adopted as a consensus document of the Standing Committee (see discussion, above). That document recommends that the Parties not include live animals in these annotations. The United States believes that the meeting of the COP must evaluate and discuss and decide on this issue, prior to discussion of either this proposal or Doc. 11.26. The United States believes that when a species is transferred from Appendix I to Appendix II with substantive annotations, commercial trade in live animals that requires findings on the part of the importing country or determinations of conditions in the importing country should not be included in the annotation.

Prop. 11.26. Transfer the Australian population of *Dugong dugon* (Dugong) from Appendix II to Appendix I. Submitted by Australia. Proposed U.S. position: Support.

Dugongs were once widely distributed in the tropical and subtropical coastal areas of the Indian Ocean and the southwest Pacific. The species' range extends from eastern Africa and Madagascar east to the eastern coast of Australia and Vanuatu, and north to the Ryukyu Archipelago, Japan. The species has been extirpated or is extremely rare in much of its former range, largely because of over hunting. All subpopulations of dugong, other than the one inhabiting coastal Australia, are currently listed in Appendix I. Australia currently protects its dugong population through domestic commercial harvest prohibitions, and researchers estimate stock size at 85,000 individuals. Some regional populations near the southern Great Barrier Reef have dropped by more than 50 percent in the last decade, but in general the Australian stock is considered to be stable and among the most abundant known.

Although Australian dugongs may not qualify for inclusion in Appendix I on the basis of trade threats or population status, Australia and two regional range countries (Indonesia and Madagascar) believe that transferring the Australian population to Appendix I will assist in regional law enforcement and antipoaching efforts, and simplify CITES permit issuance. Eight other range countries consulted by Australia (Brunei, Cambodia, China, Philippines, Singapore, Solomon Islands, Vanuatu, and Yemen) also support the proposed transfer. In addition, Resolution Conf. 9.24, adopted by the CITES parties in 1997, specifically recommends that ''split-listings'' (those involving multiple populations of a species listed in different Appendices) should be avoided where possible. For these reasons, the United States supports the Australian proposal.

Prop. 11.27. Transfer all Bolivian populations of *Vicugna vicugna* (Vicuna) that are in Appendix I to Appendix II. Submitted by Bolivia. Proposed U.S. position: Support, with zero quota for trade in cloth from newly downlisted populations. See discussion under Prop. 11.28.

Prop. 11.28. Delete the zero quota for trade in cloth from Bolivian *Vicugna vicugna* (Vicuna) populations in Appendix II. Submitted by Bolivia. Proposed U.S. position: Support provisional quota for three populations downlisted in 1997, with the quota reevaluated at the next CITES Conference of the Parties.

Three vicuna populations were transferred from Appendix I to Appendix II at COP10, with a zero quota for trade in fiber or fiber products. Bolivia appears to have the necessary legal mechanisms in place to control harvest and trade in fiber, and this proposal describes what appears to be an adequate control and monitoring system to minimize illegal harvest and ensure that illegally obtained fiber does not enter legal trade. However, Bolivia has not yet started to harvest fiber from its vicuna populations. Thus, there is no evidence that the control and monitoring systems they describe are actually working. A provisional quota for the three populations downlisted in 1997 will give Bolivia the opportunity to put its system into operation, evaluate its effectiveness, and make any necessary changes prior to implementing a country-wide harvest program. During debate at COP11, the United States will suggest that Bolivia take this measured approach.

Prop. 11.29. Transfer to Appendix I all *Moschus* spp. (Musk deer) populations currently listed in Appendix II. U.S. proposal cosponsored by India and Nepal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will work for adoption of this document by the Parties.

Prop. 11.30. Include in Appendix I all subspecies of *Ovis vignei* (Urial) not yet listed in the Appendices. Submitted by Germany. Proposed U.S. position: Undecided.

The United States is continuing to review information contained in the proposal, and the relevant literature and information available on this species. *Ovis vignei vignei* is currently included in Appendix I, and other subspecies are unlisted. The United States' initial scientific evaluation questions whether all subspecies qualify for inclusion in Appendix I, or whether some should be included in Appendix II. The United States does believe, however, that all unlisted subspecies should be included in one of the two Appendices. We are leaning toward a split listing on the basis of country populations rather than subspecies.

Prop. 11.31. Transfer Argentine populations of *Rhea pennata* (*Pterocnemia pennata pennata*) (Lesser rhea) from Appendix I to II. Submitted by Argentina. Proposed U.S. position: Support.

The United States believes that this species does not meet any of the criteria in Annex 1 of Resolution Conf. 9.34, but does meet the criteria of Annex 4, B.2.b. Based on survey data from one of the four provinces where the subspecies occurs naturally, Argentina estimates that 1,687,253 lesser rheas exist in the entire country. Density estimates have increased in recent times from 0.2 to 2.2 adults per square kilometer. Argentina's proposal would allow trade in specimens only from rhea farms registered with Argentinian authorities (19 farms are now registered) and located within the subspecies natural

range. No individuals will be removed from the wild, except for eggs needed as parental stock. All animals will be individually identified using microchips. Argentina developed a ''Conservation and Management Program for the Patagonian Rhea'' in 1996. As part of this management program, Argentina intends to conduct annual or biennial surveys of rhea populations. Three of the four Argentinian provinces where the subspecies occurs have laws regulating the establishment of rhea farms and the sustainable management of *Pterocnemia pennata pennata,* and the fourth province (Neuquen) is currently drafting such a law. Other subspecies of the rhea appear to be distinguishable through physical traits. Chile, the only other range state, supports Argentina's proposal.

Prop. 11.32. Transfer the North American population of *Falco rusticolus* (Gyrfalcon) from Appendix I to II, with a zero quota for export of wild birds. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will work for adoption of this document by the Parties.

Prop. 11.33. Transfer *Eunymphicus cornutus cornutus* from Appendix II to I. Submitted by France. Proposed U.S. position: Support (comments below, under Prop. 11.34).

Prop. 11.34. Transfer *Eunymphicus cornutus uveaensis* from Appendix II to I. Submitted by France. Proposed U.S. position: Support.

At the request of New Caledonia, France has submitted these two proposals to transfer the two subspecies of horned parakeet, *Eunymphicus cornutus cornutus* and *E. c. uveaensis,* to Appendix I from Appendix II. A similar proposal, to transfer only *E. c. uveaensis* to Appendix I, was submitted by Germany for consideration at COP10, but was withdrawn. The United States had opposed the transfer of only one subspecies to Appendix I, resulting in a split-listing, because of difficulties in distinguishing between the two subspecies in trade. However, transfer of the entire species to Appendix I would eliminate this problem, and the United States is considering supporting these proposals pending the receipt of recently published information to help assess the status of the species.

Prop. 11.35. Inclusion of *Garrulax canorus* in Appendix II. Submitted by China. Proposed U.S. position: Support.

The People's Republic of China has submitted this proposal to include *Garrulax canorus* (the hwamei) in Appendix II. The hwamei is a passerine species primarily kept as a songbird in China, although the species had been exported up until August 1998. Although the majority of specimens are traded domestically (estimated 1.7–1.8 million birds annually), over 125,000 birds were authorized for export during 1990–1997. The species is one of the more common species in China, where it exists in a dozen provinces, as well as on Hainan Island and Taiwan, and it also occurs in Vietnam and Lao PDR. Although the United States is considering supporting this proposal, the United States is seeking any additional information that might be available on the status of this species in the wild and the impact of trade on the species, and, in particular, the value of an Appendix-II listing for the conservation of this species.

Prop. 11.36. Inclusion of *Cuora* spp. (Southeast Asian box turtles) in Appendix II (*Cuora amboinensis, Cuora flavomarginata, Cuora galbinifrons* and *Cuora trifasciata* under II.2.a.; *Cuora aurocapitata, Cuora mccordi, Cuora pani, Cuora yunnanensis,* and *Cuora zhoui* under II.2.a. or II.2.b. Submitted by Germany and cosponsored by the United States.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.37. Inclusion of *Clemmys guttata* (spotted turtle) in Appendix II. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.38. Transfer of *Geochelone sulcata* (African spurred tortoise) from Appendix II to I. Submitted by France. Proposed U.S. position: Support.

The United States supports this proposal, as the species satisfies the criteria of Annex 1, C.i) and C.ii) of Resolution Conf. 9.24. The total wild population has declined from an estimated 100,000 African spurred tortoises in 1950 to just 18,000–20,000 currently. According to the World Conservation Monitoring Centre (WCMC), import of wild specimens has also increased from 461 animals in 1990 to 5,097 in 1996; many of these were exported from three non-range countries: Togo, Ghana, and Cameroon.

Prop. 11.39. Transfer of *Malacochersus tornieri* (Pancake tortoise) from Appendix II to I. Submitted by Kenya and cosponsored by the United States.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.40. Transfer the ''Cuban population'' of *Eretmochelys imbricata* (Hawksbill sea turtle) from Appendix I to II, with annotation for: (1) export of registered stocks (6,900 kg) to Japan only, and (2) the export each year thereafter, to Japan or to other Parties with equivalent controls, which will not reexport, up to 500 specimens. Submitted by Cuba and Dominica. Proposed U.S. position: Oppose.

Although the United States recognizes and appreciates the considerable efforts made by Cuba to conserve sea turtles in the Caribbean, the United States cannot support this proposal. As a range country, the United States provided comments to Cuba, based on the information provided to us in a proposal summary dated September 27, 1999; those comments are available on our web site. Existing information shows that the Caribbean regional population of hawksbill sea turtle is composed of genetically distinct stocks. Analyses of genetic samples taken from hawksbill turtles on foraging grounds across the region have revealed conclusively that these genetically distinct stocks are mixed on their feeding grounds. Samples collected from hawksbill turtles inhabiting foraging grounds in Cuba reveal that 30 percent to 58 percent of these individuals did not originate on Cuban nesting beaches. The United States is particularly concerned with the harvest of turtles in Cuban waters that are genetically aligned with source nesting populations in Puerto Rico and the U.S. Virgin Islands. Detailed systematic surveys that can begin to assess nesting trends in Cuba have only recently started, the extent to which the Cuban harvest has impacted populations outside of Cuba is also largely unknown, and the United States is concerned that the current (and proposed) harvest is unsustainable, and threatens hawksbills throughout the Caribbean. Hawksbill populations are declining or depleted in 22 of the 26 geopolitical units in the Wider Caribbean area for which some status and trend information is available. Globally, the species has experienced a decline of 80 percent in the last 3 generations (105 years), and it is unlikely that more than 15,000 females nest annually. The species has therefore been categorized by the IUCN as critically endangered.

Based on our current understanding of the status of the hawksbill in the

Caribbean, the United States does not believe it prudent for any range country to be harvesting hawksbills for domestic or international consumption. The United States is very concerned that any reopening of the hawksbill shell trade will undermine hawksbill conservation efforts not only in the Caribbean, but around the world. Based on CITES annual report data and other information, the illegal trade of hawksbill turtle products, as well as other sea turtle species, is the highest volume, most widespread, most long-term, and persistent illegal trade of any CITES Appendix I species in the Convention's 25-year history. The United States is unable to confirm that adequate enforcement controls are in place to prevent illegal trade in hawksbill turtle (or other sea turtle) specimens from Cuba or other hawksbill sea turtle range states in the Wider Caribbean, if an Appendix II listing were adopted by the meeting of the COP. The species does not qualify for transfer to Appendix II under Conf. 9.24: it both satisfies the biological criteria of Annex 1 for inclusion in Appendix I (particularly paragraphs C and D), and does not satisfy the precautionary measures in Annex 4 paragraph B.2.b. of Conf. 9.24.

Prop. 11.41. Transfer the ''Cuban population'' of *Eretmochelys imbricata* (Hawksbill sea turtle) from Appendix I to II, with annotation allowing export in one shipment of registered stocks (6,900 kg) to Japan only. Submitted by Cuba. Proposed U.S. position: Oppose.

Please see the discussion under Prop. 11.40; all comments are the same. The United States notes further that Cuba has submitted two proposals, that specify different sets of proposed annotations for the same species. The United States believes that, for a Party to submit more than one proposal for the same species or population, somehow hedging its bets that if the Parties do not adopt the first they might adopt the second, is not appropriate. The Rules of Procedure of the meeting of the COP allow a Party to amend a proposal, prior to voting, and that is the more appropriate avenue. The United States believes that a more appropriate course of action is for Cuba to decide which proposal it would like the meeting of the COP to consider, and to withdraw the other. This procedural view is independent of the United States' position on the specifics of this proposal.

Prop. 11.42. Transfer *Crocodylus moreletii* (Morelet's crocodile) populations of Sian Ka'an, Quintana Roo, Mexico from Appendix I to II. Submitted by Mexico.

Mexico has formally withdrawn its proposal to transfer a population of Morelet's crocodile (*Crocodylus moreletii*) from Appendix I to II. Mexico informed us that they withdrew the proposal on January 24, 2000. Mexico withdrew this proposal in response to recommendations made by the IUCN Crocodile Specialist Group during its January 17–20, 2000 meeting in Varadero, Cuba.

Prop. 11.43. Transfer of *Varanus melinus* from Appendix II to I. Submitted by Germany. Proposed U.S. position: Support.

This species is currently affected by increasing levels of trade and also meets the biological criteria in Annex 1 of Resolution Conf. 9.24. The wild population has a restricted area of distribution on several islands of the Sula Archipelago in Indonesia, the quality of habitat within its range has decreased, due to commercial logging. Furthermore, the species is particularly attractive to the pet trade due to its attractive coloration, its ''tameness,'' and manageable size. Finally, a decline in the number of individuals is projected, based on a decrease in the area and quality of habitat, and an increased level of exploitation for the pet trade.

Prop. 11.44. Inclusion of *Crotalus horridus* (Timber rattlesnake) in Appendix II. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.45. Deletion of *Bufo retiformis* (Sonoran green toad) from Appendix II. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.46. Inclusion of *Mantella* spp. (Mantella frogs) in Appendix II (*Mantella aurantiaca* is already in Appendix II). Jointly submitted by The Netherlands and the United States.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.47. Inclusion of *Rhincodon typus* (Whale shark) in Appendix II. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.48. Inclusion of *Carcharodon carcharias* (Great white shark) in Appendix I. Submitted by Australia and cosponsored by the United States.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.49. Inclusion of *Cetorhinus maximus* (Basking shark) in Appendix II. Submitted by the United Kingdom of Great Britain and Northern Ireland. Proposed U.S. position: Support.

The Basking Shark is widely distributed in coastal waters and on the continental shelves of temperate zones in the northern and southern hemisphere. The species is planktivorous (feeds on plankton), ovoviviparous (bears a small number of live young), and is the second largest fish in the world. The biology of the species makes it especially vulnerable to exploitation. It has a slow growth rate, a long time to sexual maturity (approximately 12–20 years), a long gestation period (1–3 years) with a similar interval between pregnancies, low fecundity, and probably small populations. Traditionally, basking sharks have been hunted for their liver, which yields an oil rich in squalene. This market is now largely superseded, but the demand for the fins has increased. The IUCN lists *C. maximus* as Vulnerable in the 1996 IUCN Red List based on past records of declining populations, due to overexploitation of fisheries, slow recovery rates, and the potential for similar declines to occur in the future due to targeted and by-catch fisheries.

There are no directed fisheries for basking sharks in the United States. Since 1997, fishing for and retention of basking sharks has been prohibited by regulation in Atlantic waters. The prohibition was implemented as a precautionary measure to ensure that directed fisheries would not develop. Basking sharks are not regulated in a Fisheries Management Plan (FMP) in U.S. Pacific waters, but the Pacific Fishery Management Council is considering the development of an FMP for highly migratory species in the area the Council covers.

This species meets the criteria listed for inclusion of species in Appendix II in Conference Resolution 9.24, Annex 2a, Bi, that ''it is known, inferred and projected that harvesting of specimens from the wild for international trade has, or may have, a detrimental impact on the species by exceeding, over an

extended period, the level that can be continued in perpetuity.''

Prop. 11.50. Inclusion of *Latimeria* spp. (Coelacanth) in Appendix I. Submitted by France and the Federal Republic of Germany. Proposed U.S. position: Support.

The species *Latimeria chalumnae* was included in Appendix I in 1989. Coelacanths (*Latimeria spp.*) are the sole survivors of the ancient Devonian lineage of crossopterygian fish, which played a pivotal role in the evolution of land-living tetrapods. According to the latest IUCN Red List of Threatened Animals, the global status of the species *Latimeria chalumnae* is Endangered, due to its small population size and limited distribution. Only a small breeding population exists off two islands of the Comoros Archipelago in the western Indian Ocean. The same must be assumed for *Latimeria menadoensis,* considering that only two specimens have been caught so far. Without protection in Appendix I, trade in this genus (excluding *L. chalumnae*) is possible and likely to exist if specimens become more available. *Latimeria* is probably one of the most sought after fish genera for collectors and scientists and, when occasionally offered in trade, may be confused with a deep sea grouper sought in Traditional Chinese Medicine. Due to a small population size and a limited distribution, any commercial trade in coelacanths will likely damage the existing population seriously. Inclusion in Appendix I would prohibit commercial trade and tightly regulate trade for scientific, educational, or public display purposes.

Prop. 11.51. Inclusion of *Latimeria menadoensis* (Menado coelacanth) in Appendix I. Submitted by Indonesia. Proposed U.S. position: Support if Prop. 11.50 is not adopted.

This proposal will be unnecessary if the proposal to list the *Latimeria* spp. is approved. However, the United States proposes to support this proposal if the *Latimeria* spp. listing proposal is not adopted.

Prop. 11.52. Inclusion of *Poecilotheria* spp. (Eastern hemisphere tarantulas) in Appendix II. U.S. proposal cosponsored by Sri Lanka.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.53. Harmonize exemptions for medicinal products: combine current annotation #2 for *Podophyllum hexandrum* and *Rauvolfia serpentina* with annotation #8 for *Taxus wallichiana.* Submitted by Switzerland. Proposed U.S. position: Support.

This proposal offers a more precise and consistent definition of those parts and derivatives of selected medicinal plant species that are exempted from the controls of the treaty. The United States expects that standardizing annotations will facilitate enforcement of CITES for medicinal plants. The United States is not aware of any negative conservation implications of this proposal.

Prop. 11.54. Inclusion of *Panax ginseng* (Ginseng) roots in Appendix II. Submitted by Russian Federation. Proposed U.S. position: Support.

Historically, the species was found in China, Korea, and Russia. However, the species is now believed to be extinct in China and Korea. The amount (by weight) of wild ginseng harvested and exported from Russia has decreased substantially during the 1990s. The official harvest quota decreased from 100 kg in 1993 to 0 kg in 1998, but poaching has increased. The species is currently listed as endangered under the Red Book of the Russian Federation. Currently, an export permit issued by the Russian Federation Trade Ministry is needed. American and Siberian ginseng are almost indistinguishable.

Prop. 11.55. Transfer of the Argentine population of *Araucaria araucana* from Appendix II to Appendix I. Submitted by Argentina. Proposed U.S. position: Support.

Populations of *Araucaria araucana,* a pine tree found in Chile and Argentina, are restricted and highly threatened in Argentina. This species qualifies for inclusion in Appendix I. Appendix I listing would assist in regulating international trade in seeds of this species, which have been confiscated in large volumes in recent years. It would also harmonize the listing for this species with the Chilean population, which is already in Appendix I. This listing would make enforcement of CITES easier and more effective for this species. This action also supports Resolution Conf. 9.24, which states that split-listings should be avoided whenever possible.

Prop. 11.56. Exempt up to three specimens of rainsticks (Cactaceae, *Echinopsis* and *Eulychnia*) per person from CITES controls. Submitted by Chile. Proposed U.S. position: Oppose.

Cacti rainsticks are products manufactured from dead specimens of several species of columnar cacti, including Chilean species in the genera *Echinopsis* and *Eulychnia.* All species in these two genera are listed in Appendix II of CITES. The raw material from these cacti, called ''normata,'' are dead and dried skeletal parts of these plants collected in the wild and then processed in Chile into the products known as rainsticks (or musical sticks). The dried skeletal parts of Chilean *Echinopsis* and *Eulychnia* species make excellent specimens for manufacturing this type of handicraft because they have central cavities ideal for filling and producing the characteristic musical effect, which sounds like falling rain.

The primary market for rainsticks is as novelty items for sale in gift and souvenir shops, both in Chile and in other countries to which the rainsticks have been exported (including the United States). The international trade in cacti rainsticks is in part commercial, for the gift shop market, and in part noncommercial, as personal effect souvenirs purchased by tourists.

The trade in rainsticks was an issue for discussion at the past several meetings of the CITES Plants Committee. At the 9th meeting of the Plants Committee in June 1999, the Committee recognized the problem of tourists purchasing cacti rainsticks as souvenirs in countries that they are visiting and then having them confiscated when they return to their home countries because they did not obtain CITES permits for the export of these Appendix II items. To address this problem, Chile recommended preparation of a proposal to exempt shipments of up to three units of Chilean *Echinopsis* and *Eulychnia* cacti rainsticks from the provisions of CITES, specifically when being transported by tourists as long as the tourists had the products with them. The Plants Committee agreed that such an exemption did not pose a conservation problem for the species involved, since the skeletal parts used to produce the rainsticks are collected from specimens in the wild that are already dead and dried, and supported the proposal by Chile. Chile has subsequently submitted a proposal to COP11 to exempt up to three specimens of *Echinopsis* and *Eulychnia* cacti rainsticks per person from CITES controls.

The United States agrees with the Plants Committee's assessment that such an exemption would not pose a conservation problem for the species involved. However, the United States does not agree that this exemption should be proposed to the Conference of the Parties via an annotation to the CITES Appendices, as Chile has done by submitting its proposal. CITES Article VII, paragraph 3, already allows the imports and exports of Appendix II cacti rainsticks as personal effects and, therefore, including a personal effects exemption as an annotation to a listing would circumvent or overrule those

Parties that have deliberately chosen not to recognize personal effects exemptions under their domestic legislation.

The United States believes that the appropriate avenue for such an exemption to be considered by the Parties is through a proposed resolution. Inclusion of the exemption as a recommendation in a resolution would allow Parties the option of implementing the exemption or not implementing it. A precedent already exists in Resolution Conf. 10.12, regarding conservation of sturgeon, which includes a recommendation for a personal effects exemption for caviar for up to 250 grams per person, similar to the cacti rainstick exemption being proposed by Chile.

The United States believes that Chile's rainstick exemption proposal should be considered via a proposed amendment to CITES Resolution Conf. 9.18 (Rev), regarding regulation of trade in plants. This resolution already includes a section recommending an exemption for flasked seedlings of orchid species listed in Appendix I, and the rainstick exemption could be added as another recommendation.

Should this exemption be adopted as an amendment to Conf. 9.18 (Rev.), the United States is concerned whether plant inspection officials at ports of import and export will be able to differentiate *Echinopsis* and *Eulychnia* rainsticks from rainsticks made from other species. The United States plans to investigate this matter with plant inspectors of the U.S. Department of Agriculture prior to the United States formulating its final negotiating position on this proposal.

Prop. 11.57. Deletion of *Kalmia cuneata* (White wicky) from Appendix II. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.58. Inclusion of *Camptotheca acuminata* in Appendix II. Submitted by China. Proposed U.S. position: Support.

This tree, once widely distributed throughout southern China, has been significantly reduced in its distribution and abundance primarily by habitat destruction and harvest for Camptothecin, an alkaloid used to treat AIDS and some types of cancer. This species is widely artificially propagated, though not on a commercial scale outside of China. No synthetic substitute exists for Camptothecin. China is, therefore, the sole source of Camptothecin for the international market. Estimates of average annual Camptothecin production in China suggest that at least 500,000–750,000 trees per year are affected. Appendix II listing could benefit this species if it pertains to all parts and derivatives of the plant.

Prop. 11.59. Inclusion of *Cistanche deserticola* in Appendix II. Submitted by China. Proposed U.S. position: Support.

This species is a parasitic herb native to China that is used to improve kidney function and treat impotence. The main threats to it are overexploitation from the wild for its medicinal value and the destruction of its host plants, *Haloxylon ammondendron* and *H. persicum. Cistanche deserticola* has been severely impacted by over collection from the wild in certain areas, especially in the Inner Mongolia Autonomous Region. It is now listed in the Red Data Book of China Plants and as a State Protected Species. International trade in this species grew to an estimated 120 tons per year in the 1980s, but has since declined due to supply restrictions. It is primarily exported to Japan, Hong Kong, and Southeast Asia. This species is difficult to cultivate due to its parasitic nature and is not artificially propagated on a commercial scale.

Prop. 11.60. Inclusion of *Harpagophytum procumbens* and *Harpagophytum zeyheri* in Appendix II. Submitted by Germany. Proposed U.S. position: Support.

These species are found in several countries in southern Africa, but mainly in Namibia and Botswana. A decline in wild populations of *Harpagophytum procumbens* has been recorded in both these countries. A main threat to *H. procumbens* is the large-scale harvest of its secondary storage tubers using detrimental harvesting techniques, primarily for international markets. Export of *H. procumbens* from its main range states is significant and strongly increasing and has led to its overexploitation in Botswana and some parts of Namibia. The material in trade originates exclusively from the wild. Most of it is exported to Europe. *H. zeyheri* is also traded internationally for its medicinal value and is difficult to distinguish from *H. procumbens.* Grazing also presents a threat to these species.

Prop. 11.61. Inclusion of *Adonis vernalis* in Appendix II (potted live plants to be excluded). Submitted by Germany. Proposed U.S. position: Support, with the exception of the exclusion of live potted plants.

This species, primarily used for medicinal purposes but also valued as an ornamental plant, is distributed throughout the steppe and grassland ecosystems of central and eastern Europe. It mainly occurs in isolated, fragmented populations today. It is considered to be threatened and is included in most red data books of its range countries. The many threats to this species include overexploitation for international trade and detrimental harvesting techniques. Bulgaria, Hungary, Romania, Ukraine, and Russia are the main exporters of this species. The main importers are Germany and France. Restrictions on harvest have been established in Bulgaria and Hungary. Almost all plant material in trade originates from wild stock. Regarding the proposed exclusion of potted live plants, we sympathize with the intent, but do not believe it is allowed by the treaty. CITES Article I paragraph (b)(iii) states that, for plants, a specimen is defined as: ''for species included in Appendix I, any readily recognizable part or derivative thereof; and for species included in Appendices II and III, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species.'' Therefore, the listing of a plant species in Appendix II can specify (or exempt) certain recognizable parts or derivatives. The listing cannot, however, exempt whole plants that are in pots, which is not a part or derivative.

Prop. 11.62. Transfer of *Guaiacum sanctum* (Holywood lignum vitae) from Appendix II to Appendix I. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Conclusion of the Meeting

60. Determination of the time and venue of the next regular meeting of the Conference of the Parties [Doc. 11.60]

When we completed this notice, we still had not received a document from the Secretariat regarding candidates as host governments for COP12. The United States favors holding COP12 in a country where all Parties and observers will be admitted without political difficulties. The United States proposes to support the holding of the meetings of the COP on a biennial basis, or, as in the case of COP10, after an interval of approximately 2½ years.

61. Closing remarks [no document]

Future Actions

Before COP11, we will announce any changes to the proposed negotiating

positions contained in this notice and any undecided negotiating positions by posting a notice on our Internet website (http://international.fws.gov/global/cites.html). After the meeting of the COP, we will publish a notice in the **Federal Register** announcing the amendments to CITES Appendices I and II that were adopted by the Parties at the meeting, and requesting comments on whether the United States should enter reservations on any of these amendments.

Dated: March 3, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–5617 Filed 3–3–00; 4:32 pm]

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TRANSPORTATION DEPARTMENT

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Rolls-Royce Ltd.; comments due by 3-13-00; published 1-12-00

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Class E airspace; comments due by 3-15-00; published 2-14-00

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Term capped policies; cash value; comments due by 3-16-00; published 2-15-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1451/P.L. 106–173

Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

S. 632/P.L. 106–174

Poison Control Center Enhancement and Awareness Act (Feb. 25, 2000; 114 Stat. 18)

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